

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL
WITH PROOF
OF SERVICE

75-7655

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

B
P/S

TRANS WORLD AIRLINES, INC.,

Plaintiff-Appellee,

-against-

CHARLES W. BEATY, WILLIAM R. BREEN, JOHN P. CARR,
FRANKLIN D. DACK, DAVID LEWIS DAVIES, FRANK DAVIS,
CHESTER LEE EDWARDS, OTTO F. FLEISCHMANN, ROBERT
W. GAUGHAN, E.T. GREENE, LAWRENCE RAYMOND JESSE,
KENNETH E. LENZ, EDWARD A. LEONHARD, A.C. LOOMIS,
Jr., VERNON C. MEYER, JAMES MILTON MILLER, MARSHALL
EARL QUACKENBUSH, CHARLES V. TATE and CHARLES E.
WOOLSEY,

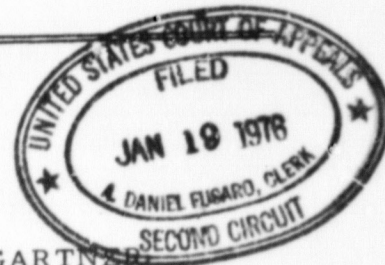
Defendants-Appellants.

On Appeal from an Order and Judgment of the United States
District Court for the Southern District of New York

APPENDIX

O'DONNELL & SCHWARTZ
Attorneys for Defendants-Appellants
501 Fifth Avenue
New York, N. Y. 10017

POLETTI FREIDIN PRASHKER FELDMAN & GARTNER
Attorneys for Plaintiff-Appellee
777 Third Avenue
New York, N. Y. 10017



(5206A)

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DOCKET OF THE CASE

DISTRICT COURT

Jury demand date

JUDGE CHEN
JUDGE CANNELLA

TITLE OF CASE

TRANS WORLD AIRLINES, INC.,

Plaintiff,

v.

CHARLES W. BEATY, WILLIAM R. BREEN,
JOHN P. CARR, FRANKLIN D. BACK,
DAVID LEWIS DAVIES, FRANK DAVIS,
CHESTER LEE EDWARDS, OTTO F.
FELTSCHMANN, ROBERT W. GAUGHAN,
B. T. GREENE, LAWRENCE RAYMOND JESSE,
KENNETH E. LEWIS, EDWARD A. LEONARD,
A. C. LOOMIS, JR., VERNON C. MEYER,
JAMES MILTON MUMBER, MARSHALL PAUL
KRENBUSH, CHARLES V. TATE, and
JES. B. WOOLSEY,

Defendants.

For plaintiff:

POLETTI FRIDEN PRACHKE FELDMAN & PARTNER
777 Third Avenue,
N.Y.C. N.Y. 10017

For defendant:

O'Donnell & Schwartz (for defts)
501 Fifth Ave. NY 10017 HU 2-1261.

11/18

STATISTICAL RECORD

COSTS

DATE

NAME OR
RECEIPT NO.

REC

5 mailed

X

Clerk

6 mailed

✓

Marshal

of Action:

FAIR LABOR ACT.

U.S.C.

Docket fee

Witness fees

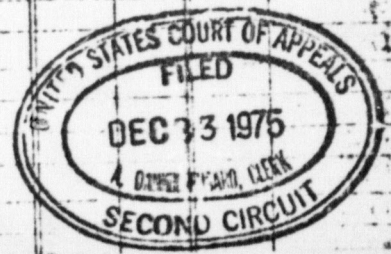
ion arose at:

Depositions

July
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Friden

11

11



DOCKET OF THE CASE

TRANS WORLD AIRLINES, INC. VS. CHARLES W. BEATY, ET-AL

71 CIV. 3533

DATE	PROCEEDINGS	Date Order Judgment N
Aug-71	Filed Complaint. Issued Summons.	
Aug-71	Filed Order U.D. PRCP-11 (C) that GEO. HARMON a RESIDENT OF N.Y.L. STATE KE IS HEREBY ORKNEYD APPOINTED TO TAKE SERVICE OF THE SUMMONS & COMPLAINT. UPON THE DEFTS. THAT J. LIVINGSTON.	
Aug-10-71	Filed summons with affidavit of service. Served defendants on 8/9/71.	
Aug-31-71	Filed stip and order that the time for defts' to answer complaint is ext. 8-26-71 to 9-14-71 So Ordered; Wyatt, J.	
Aug-22-71	Filed Notice of Motion re: Dismiss Complaint. Ret. 9/28/71. (by defendant).	O&S
Aug-22-71	Filed Memorandum submitted on behalf of defts. in support of motion to dismiss.	
Aug-10-72	Filed Defts. Interrogs.	
Aug-1-72	Filed Notice of Motion re: Pre. Inj. and Stay. Ret. 2/8/72. (by defts.), together with affidavit in support thereof.	
Aug-7-72	Filed stipulation on adjourning motion now ret. 2/8/72 to 2/22/72.	
Aug-2-72	Filed stipulation and order extending time to answer interrogs. to 2/17/72. So ordered. Bauman, J.	
Aug-15-72	Filed Memorandum of Pltf. in opposition to defts' motion to dismiss.	
Aug-15-72	Filed Reply Brief on behalf of Trans World Airlines in opposition to defts'1 motion to dismiss.	
Oct-12-71	Filed (in court) Reply Memorandum on behalf of defendants.	
Feb-15-72	Filed OPINION #38265. Cooper, J. Defendants' motion to dismiss complaint for failure to state a claim upon which relief can be granted, is DENIED. Plaintiffs have stated a cause of action upon which relief can be granted for as we noted in Humble Oil & Refining Co. vs. Local 666 IBT, the duty to arbitrate, etc. are questions for the Court to decide on the basis of the contracts entered into by the parties, etc. etc. We therefore deny the within motion addressed to laches with leave to renew following the determination of the primary issues. So ordered. (mailed notice).	
Feb-18-72	Filed Affidavit in opposition to motion for preliminary injunction.	
Feb-18-72	Filed Memorandum on behalf of Trans World Airlines in opposition.	
Feb-17-72	Filed Responses to Defendants' Interrogatories.	
Mar-7-72	Filed OPINION #28306. Tenney, J. For the reasons stated, defendants' motion for a preliminary injunction is denied. So ordered. (mailed notice).	
Mar-14-72	Filed stipulation and order extending defendants time to answer to 3/21/72. So ordered. Metzner, J.	
Mar-21-72	Filed Amendment of Responses to Defendants' Interrogatories.	
MAR 23-72	Filed ANSWER of defendants, to complaint.	O&D
MAR 30-72	Filed Notice to take Depositions upon oral examination for Franklin D. Dack A. Wenzlaff, etc.	
Apr-10-72	Filed Notice of Motion re: Protective Order (re: depos.) Ret. 4/13/72 (by defts.)	
Apr-10-72	Filed Memorandum on behalf of defts. Dack, Wenzlaff, Breen, Jesse, Leonhard, Lenz and Tate.	
APR 12-72	Filed request to produce.	
Apr-24-72	Filed Notice to take Depositions upon oral examination of Kenneth E. Lenz, Charles V. Tate, etc.	
Apr-24-72	Filed REPORT and RECOMMENDATIONS of U.S. Magistrate Gerard L. Goettel.	
Apr-24-72	Filed Memorandum on behalf of pltf. Trans World Airlines, Inc. in opposition to defendants' motion for a protective order.	
Apr-12-72	Filed Affidavit in opposition to defendants' motion for a protective order.	
Apr-22-72	Mailed notice of reassignment.	
4/27/72	<i>Reassigned to Judge S. Shuster</i>	
4/27/72	<i>Reassigned to Judge S. Shuster</i>	
4/27/72	<i>Reassigned to Judge S. Shuster</i>	
4/27/72	Filed amendments to pltf's pre-trial memorandum	
4/27/72	Filed pltf's response to Def's (second) Supplemental Pre-Trial Memorandum.	

B

DOCKET OF THE CASE

Page #3.

Docket Continuation

PROCEEDINGS

Date
Judge

74	Filed deft's (R.W.Gaughan) response to request for admissions.	
5-74	Filed deft's (C.E.Woolsey) response to request for admissions.	
25-74	Filed deft's (C.L.Edwards) response to request for admissions.	
25-74	Filed deft's (J.M.Miller) response to request for admissions.	
25-74	Filed deft's (D.L.Davies) response to request for admissions.	
25-74	Filed deft's (O.F.Fleischmann) response to request for admissions.	
25-74	Filed deft's (M.E.Quackenbush) response to request for admissions.	
25-74	Filed deft's (E.T.Greene) response to request for admissions.	
25-74	Filed deft's (L.P.Care) response to request for admissions.	
7-11-74	PRE-TRIAL CONFERENCE HELD BY <i>Schuler</i>	
Oct. 29-74	Filed plttf's pre-trial memorandum	
Oct. 29-74	Filed deft's pre-trial memorandum.	
Oct. 29-74	Filed defts' supplemental pre-trial memorandum.	
Oct. 29-74	Filed stip & order of facts--Cannella, J.	
Nov. 19-74	Filed Consent & Pre-trial order. So ordered- CANNELLA, J.	
Dec. 2-74	Before Cannella, J. non-jury trial begun and concluded. Judge's decision reserved.	
Jan. 23-75	Filed stip & order that the date for filing of post-trial briefs and proposed findings of fact and conclusions of law is extended from 1-27-75 to 2-13-75. So ordered- CANNELLA, J.	
Feb. 19-75	Filed stip & order that the date for filing of post-trial briefs and proposed findings of fact and conclusions of law is extended from 2-13-75 to 2-21-75- and that the date for filing reply briefs is extended to 3-7-75. So ordered- CANNELLA, J.	
Feb. 19-75	Filed transcript of record of proceedings, dated 12-2-74	
Mar. 27-75	Filed stip & order that the date for filing of reply briefs is extended from 3-24-75 to 3-26-75. So ordered- CANNELLA, J.	
Mar. 28-75	Filed reply brief on behalf of plttf.	
Oct. 17-75	Filed Opinion No. 43255, For the reasons stated above, the Court finds & concludes that Plttf is entitled to an order enjoining arbitration of defts grievances. The foregoing constitute the findings of fact & conclusions of law of the Court pursuant to Fed.R.Civ.P.52(a) So Ordered. CANNELLA, J.	(m)
Nov. 6-75	Filed Order and Judgment-- that plttf. is not contractually obligated to arbitrate the claims sought to be arbitrated by the defts., and the defts. are permanently enjoined from seeking to arbitrate those claims. CANNELLA, J. Judgment entered-11-6-75 Clerk (m/n)	
Nov. 19-75	Filed undertaking for costs on appeal in the sum of \$ 250.00- Fidelity and Deposit Company of Maryland	
Nov. 19-75	Filed defts' notice of appeal to USCA from the final Order & Judgment entered on 11-6-75. Copy mailed to: Polletti Friedin Prashker, Feldman & Gartner. Ent. 11-20-75	
Dec. 23-75	Filed Memorandum on behalf of defts., dated Feb. 28-75.	
Dec. 23-75	Filed Post-Trial Brief in support of proposed findings of fact on behalf of plaintiff <i>World Airlines, Inc.</i> dated Mar. 7-75.	
Dec. 23-75	Filed Reply Memorandum on behalf of defts. dated Mar. 24-75.	

RAYMOND F. BORDO, Clerk

By *[Signature]*
Deputy Clerk

SUMMONS

SUMMONS IN A CIVIL ACTION

(Formerly D. C. Form No. 45 Rev. (6-19))

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 71 Civ. 353

TRANS WORLD AIRLINES, INC.,

Plaintiff

v.

SUMMONS

CHARLES W. BEATY, WILLIAM R. BREEN, JOHN P. CARR, FRANKLIN D. DACK, DAVID LEWIS DAVIES, FRANK DAVIS, CHESTER LEE EDWARDS, OTTO F. FLEISCHMANN, ROBERT W. GAUGHAN, E. T. GREENE, LAWRENCE RAYMOND JESSE, KENNETH E. LENZ, EDWARD A. LEONHARD, A. C. LOOMIS, JR., VERNON C. MEYER, JAMES MILTON MILLER, MARSHALL EARL QUACKENBUSH, CHARLES V. TATE, and CHARLES E. WOOLSEY Defendants.

To the above named Defendants:

You are hereby summoned and required to serve upon Poletti Freidin Prashker Feldman & Gartner plaintiff's attorney, whose address is 777 Third Avenue, New York, New York 10017 an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint.

/s/ John Livingston
Clerk of Court.

/s/
Deputy Clerk.

[Seal of Court]

Date: August 9, 1971

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
TRANS WORLD AIRLINES, INC.,

Plaintiff,

v.

CHARLES W. BEATY, WILLIAM R. BREEN,
JOHN P. CARR, FRANKLIN D. DACK,
DAVID LEWIS DAVIES, FRANK DAVIS,
CHESTER LEE EDWARDS, OTTO F.
FLEISCHMANN, ROBERT W. GAUGHAN,
E. T. GREENE, LAWRENCE RAYMOND JESSE,
KENNETH E. LENZ, EDWARD A. LEONHARD,
A. C. LOOMIS, JR., VERNON C. MEYER,
JAMES MILTON MILLER, MARSHALL EARL
QUACKENBUSH, CHARLES V. TATE, and
CHARLES E. WOOLSEY,

Defendants.
-----X

71 Civ.

COMPLAINT

Plaintiff, by its attorneys, POLETTI FREIDIN PRASHKER
FELDMAN & GARTNER, as and for its complaint herein, alleges:

1. This is an action for a stay and injunction of arbitration proceedings and declaratory judgment. This Court has jurisdiction of this civil action under 28 U.S.C. §§1331, 1332, 1337, 2201 and 2202. The matter in controversy exceeds the sum or value of \$10,000 exclusive of interest and costs. This action arises under the Railway Labor Act, 45 U.S.C. §§151-81 and laws of the United States, and under the New York Civil Practice Law and Rules, §§7502, 7503.

2. Plaintiff Trans World Airlines, Inc. ("TWA") is a corporation duly organized and existing under the laws of the State of Delaware and duly qualified to do business in the State of New York, having its principal office and place of

COMPLAINT

business at 605 Third Avenue, in the County and State of New York.

3. Each defendant is a former employee of TWA and each defendant, upon information and belief, has the residence set forth below his name.

CHARLES W. BEATY
13855 West 67th Street
Shawnee, Kansas 66216

WILLIAM R. BREEN
7343 Mackey Street
Overland Park, Kansas 66204

JOHN P. CARR
2006 Latham Street, #56
Mountain View, California 94040

FRANKLIN D. DACK
1219 Circle Court
McHenry, Illinois 60050

DAVID LEWIS DAVIES
Wolf Road, Taunton Lakes
Marlton, New Jersey 08053

FRANK DAVIS
703 Gulf Street
Lamar, Missouri 64759

CHESTER LEE EDWARDS
1730 North 78 Terrace
Kansas City, Kansas 66112

OTTO F. FLEISCHMANN
212 Mimosa Circle
Ridgefield, Connecticut 06877

ROBERT W. GAUGHAN
3526 West 92nd Place
Leawood, Kansas 66206

E. T. GREENE
10401 Sagamore Road
Leawood, Kansas 66206

LAWRENCE RAYMOND JESSE
8403 West 98 Circle
Overland Park, Kansas 66212

KENNETH E. LENZ
9662 Dodson Way
Villa Park, California 92667

EDWARD A. LEONHARD
6809 North Park Plaza
Kansas City, Missouri 64151

A. C. LOOMIS, JR.
1320 S.E. 4th Street
Deerfield Beach, Florida 33441

VERNON C. MEYER
1901 N. W. 45 Street
Kansas City, Missouri 64150

JAMES MILTON MILLER
371 Silvera Avenue
Long Beach, California 90814

MARSHALL EARL QUACKENBUSH
18602 Nubia
Covina, California 91722

CHARLES V. TATE
812 South Pacific Highway
Talent, Oregon 97540

CHARLES E. WOOLSEY
1801 Third Street
LaVerne, California 91750

COMPLAINT

4. At all times pertinent hereto, TWA has employed flight crew members in the classifications of Flight Engineer, Pilot First Officer and Captain.

5. In or about 1963, each of the defendants herein, then employed as a Flight Engineer, signed an individual agreement which TWA, in the form annexed hereto as Exhibit 1. The said agreement contained a limited arbitration provision and declared, among other things, that the agreement "shall continue in full force and effect until the Flight Engineer's retirement, voluntary resignation or discharge for cause." Each of the aforesaid individual agreements also contains the following provision:

"8. This Agreement shall be deemed to have been executed and delivered in the State of New York and shall be construed and enforced according to the laws of the State of New York, and all provisions thereof shall be administered according to the laws of such state" (see Exhibit 1, p. 3).

6. Thereafter, each of the defendants voluntarily bid for and was assigned a position as TWA Pilot First Officer and continued to serve as such until his resignation or discharge, as alleged below.

7. Pursuant to the terms of a collective bargaining agreement between TWA and the Air Line Pilots Association, International ("ALPA"), then the designated collective bargaining representative for TWA's Flight Engineers, Pilot First Officers and Captains, each defendant was assigned to training for upgrading to TWA Captain. Each defendant failed satisfactorily to

COMPLAINT

complete that training. Upon such failure, each defendant was either permitted to resign or was discharged for cause. The dates each such defendant resigned or was discharged for cause are as follows:

Charles W. Beaty	Discharged January 25, 1971
William R. Breen	Discharged June 19, 1970
John P. Carr	Resigned April 13, 1970
Franklin D. Dack	Discharged February 16, 1971
David Lewis Davies	Discharged July 8, 1970
Frank Davis	Discharged November 10, 1970
Chester Lee Edwards	Discharged June 3, 1969
Otto Fleischmann	Discharged July 20, 1970
Robert W. Gaughan	Discharged June 1, 1970
E. T. Greene	Discharged June 9, 1970
Lawrence Raymond Jesse	Discharged March 26, 1971
Kenneth E. Lenz	Discharged November 17, 1970
Edward A. Leonhard	Discharged December 23, 1970
A. C. Loomis, Jr.	Discharged November 24, 1970
Vernon C. Meyer	Discharged February 8, 1971
James Milton Miller	Discharged June 15, 1970
Marshall Earl Quackenbush	Discharged March 31, 1970
Charles V. Tate	Discharged September 29, 1970
Charles E. Woolsey	Discharged May 13, 1971

8. At the time of the aforesaid resignations and discharges and to the present time, ALPA was and is the representative under the Railway Labor Act, 45 U.S.C. §§151-88, of all TWA's Flight Engineers, Pilot First Officers and Captains. The collective bargaining agreement between TWA and ALPA provides an exclusive procedure pursuant to Section 204 of the Railway Labor Act, 45 U.S.C. §184, for the processing of a grievance involving discharge to a TWA Pilot System Board of Adjustment ("the System Board").

9. The uniform course of decisions of the aforesaid System Board has been that a TWA Pilot First Officer who fails to satisfactorily complete Student Captain training after having

COMPLAINT

been given a sufficient opportunity to do so was properly discharged for cause, but the said System Board has jurisdiction to consider and adjudicate any claim that in such case a Pilot First Officer shall be returned to his Pilot First Officer position or to a Flight Engineer position.

10. Following the resignation and discharges alleged above in paragraph 7, each of the defendants other than defendants Carr, Davis and Quackenbush filed a grievance with TWA in respect of his discharge, and TWA thereafter responded to such grievance, on the dates indicated below:

<u>Defendant</u>	<u>Date Grievance Filed</u>	<u>Date of TWA Response</u>
Charles W. Beaty	February 2, 1971	March 12, 1971
William R. Breen	June 30, 1970	August 3, 1970
Franklin D. Dack	February 18, 1971	March 8, 1971
David Lewis Davies	July 14, 1970	July 31, 1970
Chester Lee Edwards	June 13, 1969	August 27, 1969
Otto F. Fleischmann	July 23, 1970	August 10, 1970
Robert W. Gaughan	June 13, 1970	September 2, 1970
E. T. Greene	June 26, 1970	August 19, 1970
Lawrence Raymond Jesse	April 2, 1971	May 7, 1971
Kenneth E. Lenz	November 13, 1970	November 30, 1970
Edward A. Leonhard	December 31, 1970	February 22, 1971
A. C. Loomis, Jr.	December 2, 1970	January 11, 1971
Vernon C. Meyer	February 16, 1971	March 12, 1971
James Milton Miller	June 24, 1970	July 15, 1970
Charles V. Tate	October 10, 1970	October 26, 1970
Charles E. Woolsey	May 20, 1971	

Defendant Woolsey withdrew his grievance on June 8, 1971.

Following the response of TWA, each of the above defendants processed his grievance to the System Board.

11. On or about October 23, 1969, the System Board sustained the discharge of defendant Edwards. Defendant Davies withdrew his grievance from the System Board on October 20, 1970.

COMPLAINT

12. Grievances complaining of the termination of defendants Beaty, Breen, Dack, Fleischmann, Gaughan, Greene, Jesse, Lenz, Leonhard, Loomis, Jr., Meyer, Miller and Tate, are currently pending before the said System Board.

13. During June 1971, each of the defendants herein, except, on information and belief, defendants Gaughan and Greene, sent or caused to be sent to TWA a letter claiming that the Company had violated his individual agreement (supra, ¶5) by refusing to assign him to a Flight Engineer position following his failure to satisfactorily complete training as a TWA Captain, and requesting arbitration of such claim pursuant to the arbitration provisions of that agreement. Copies of those letters are attached hereto as Exhibit 2. By letter dated July 2, 1971, TWA rejected these requests for arbitration.

14. By notices dated July 22, 1971, and served upon TWA on July 30, 1971, pursuant to Section 7503(c) of the New York Civil Practice Law and Rules, the defendants announced their intention to demand arbitration of their claims under their individual agreements. Each such notice also contained the following paragraph:

"PLEASE TAKE FURTHER NOTICE that unless within ten days after service of this notice of intention to arbitrate you apply to stay the arbitration herein, you shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time."

COMPLAINT

Copies of the said notices are attached hereto as Exhibit 3.

15. Section 7503(b) of the New York Civil Practice Law and Rules states:

"(b) Application to stay arbitration. Subject to the provisions of subdivision (c), a party who has not participated in the arbitration and who has not made or been served with an application to compel arbitration, may apply to stay arbitration on the ground that a valid agreement was not made or has not been complied with or that the claim sought to be arbitrated is barred by limitation under subdivision (b) of section 7502."

16. TWA has not participated in the arbitration sought by defendants and has not made or been served with an application to compel arbitration.

17. As a result of the aforesaid resignation and discharges for cause (supra, ¶7), the aforesaid individual agreements have terminated in respect of each such defendant, subject only to the jurisdiction of the System Board to determine that such terminations were improper under the applicable collective bargaining agreement. Therefore, no valid subsisting contract to arbitrate has been made.

18. The defendants each failed to comply with the terms of the individual agreements under which they seek arbitration, in that they each failed to assert their claims under such agreements within the time and manner provided therein.

19. The defendants each failed to request arbitration of their claims under the said individual agreements in the time or manner therein provided, and are barred by laches from

COMPLAINT

now seeking arbitration.

20. Under the Railway Labor Act, the System Board is the exclusive forum for the resolution of the claims raised by defendants in their notices of intent to arbitrate, and no arbitrator has jurisdiction of those claims.

21. A dispute exists between the parties herein as to whether the defendants have the present right, under their individual agreements, the Railway Labor Act and the New York Civil Practice Law and Rules, to submit to an arbitrator the claims stated in their aforesaid notices of intent to arbitrate.

WHEREFORE, plaintiff prays that this Court:

1. Order that the arbitration proceeding sought by defendants be permanently stayed and enjoined and that their notices of intent to arbitrate be withdrawn;
2. Render a declaratory judgment settling and declaring the rights, interests and legal relationships of the respective parties to the matters detailed herein; and
3. Grant such other, further or different relief to which the plaintiff may be entitled in the premises.

Dated: New York, New York
August 9, 1971

POLETTI FREIDIN PRASHKER
FELDMAN & GARTNER

By *David Hand*

A Member of the Firm
Attorneys for Plaintiff
Trans World Airlines, Inc.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X
TRANS WORLD AIRLINES, INC.,

Plaintiff,

vs.

71 Civ. 3533

CHARLES W. BEATY, WILLIAM R. BREEN,
JOHN P. CARR, FRANKLIN D. DACK,
DAVID LEWIS DAVIES, FRANK DAVIS,
CHESTER LEE EDWARDS, OTTO F. FLEISCHMANN,
ROBERT W. GAUGHAN, E.T. GREENE, LAWRENCE
RAYMOND JESSE, KENNETH E. LENZ, EDWARD A.
LEONHARD, A.C. LOOMIS, Jr., VERNON C.
MEYER, JAMES MILTON QUACKENBUSH, CHARLES
V. TATE and CHARLES W. WOLSEY,

Defendants.
-----X

ANSWER

The defendants, by their attorneys, O'Donnell & Schwartz,
Esqs., for their answer, respectfully allege:

For a First Defense

1. Deny each and every allegation contained in paragraphs 17, 18, 19 and 20.
2. Deny each and every allegation contained in paragraph 1, except that the matter in controversy exceeds the sum or value of Ten Thousand (\$10,000) Dollars and that the action arises under the New York Civil Practice Law and Rules §7502, 7503.
3. With respect to the allegation contained in paragraph 7, deny that each defendant failed to complete student

captain training satisfactorily but admit that TWA discharged each defendant other than defendant Carr because of its claim that each such defendant failed to complete student captain training satisfactorily and that defendant Carr resigned his pilot position because of TWA's claim that he failed to complete student captain training satisfactorily.

4. With respect to the allegations contained in paragraph 8, admit that at the time of the aforesaid resignation and discharges and from March 19, 1968 to the present time, ALPA was and is the representative of TWA's Flight Engineers, Pilot First Officers and Captains, but deny that the Agreement between TWA and ALPA provides an exclusive procedure for the processing of defendants claims involving discharge.

5. Admit each and every allegation contained in paragraphs 2,3,4,6,10,11,12,13, 14, 15, 16, 21.

6. With respect to the allegations contained in paragraph 5, admit that each of the defendants signed an individual agreement with TWA, and respectfully refer the Court to Exhibit 1 of the Complaint as to its terms."

7. Deny knowledge or information sufficient to form a belief with respect to the allegations contained in paragraph 9.

For a Second Separate and Distinct
Affirmative Defense, Defendants Allege:

8. Prior to March 19, 1968, the Flight Engineers International Association, AFL-CIO, (hereinafter called "FEIA"),

was recognized as the bargaining representative for the class or craft of flight engineers, employed by TWA, for the purpose of negotiating hours of labor, wages and working conditions.

9. On or about June 21, 1962, TWA and the TWA Chapter, FEIA, the latter acting on behalf of the defendants, settled the Airline Crew Complement Controversy on TWA by a Crew Complement Agreement, (hereinafter called the "Crew Complement Agreement").

10. The Crew Complement Agreement was entered into by TWA's flight engineers at the instance and request of TWA, FEIA and the U.S. Government, in order to accomplish a practical and reasonable transition from a four-man jet crew operation to a three-man jet crew operation with full protection to the aforesaid flight engineers to bid for and occupy the flight engineer position with prior rights thereto.

11. The Crew Complement Agreement provided, inter alia, that:

"The Flight Engineers listed in Memoranda A and A1 shall be recognized as entitled at all future times and until retirement or discharge for cause to priority rights to all Flight Engineer positions required by the Company's operations, as detailed and implemented in attached Memorandum C."

12. Memorandum C to the aforesaid Crew Complement Agreement further spells out the prior rights of the aforesaid flight engineers. It also obligated TWA to enter into an Individual Agreement, (hereinafter called the "Individual Agreement"), with each flight engineer then employed by TWA or on furlough with re-

call rights and incorporating the Agreement as stated in such Memorandum guaranteeing to him a prior right to occupy the flight position. Memorandum C provided:

"So long as the Company, its successors or assigns, includes or is required by law or federal regulation to include as a member of its cockpit flight crews in excess of two airmen and one airman is assigned to perform the Flight Engineering Functions, the Company, its successors and assigns, agrees that it will offer to all Flight Engineers named on Memoranda A and A1 the prior right as against flight crew members other than Flight Engineers to bid and occupy all Flight Engineer positions required by the Company's operations and those of its successors and assigns until their retirement, voluntary resignation or discharge for cause. * * *

"This agreement of the Company is to be made with each individual directly and is to be legally enforceable by him against the Company, and its successors and assigns, and it shall be in such form as shall survive the duration of the basic working Agreement and succeeding agreements and is intended to continue in effect unless at any time a majority of such Flight Engineers shall voluntarily decide to reopen this Agreement for modification or repeal."

13. Section 8 of the Crew Complement Agreement provided:

"Duration. This Memorandum of Agreement and accompanying attachments shall remain in effect during the term of the basic working Agreement and succeeding agreements and shall continue in effect without change unless, at such times as the basic working Agreement and succeeding agreements are open for revision by reason of notice having been served in accordance with Section 6 of the Railway Labor

Act, a majority of the Flight Engineers listed in Memoranda A and A1 shall voluntarily decide to reopen this Agreement and attachments, independently of the reopening of the basic working Agreement, for modification or repeal."

14. Pursuant to said Memorandum C, TWA and each of the defendants entered into an Individual Agreement, a copy of which is annexed to the Complaint herein as Exhibit 1. Paragraph 8 of the Individual Agreement states:

"This Agreement shall be deemed to have been executed and delivered in the State of New York and shall be construed and enforced according to the laws of the State of New York, and all provisions thereof shall be administered according to the laws of such state."

15. The Individual Agreement guarantees to each individual engineer, as does the Crew Complement Agreement itself, his prior right to fill the flight engineer position as against any pilot or flight crew member other than flight engineers.

16. The parties agreed that the Individual Agreement shall survive the expiration of all collective bargaining agreements to which TWA is a party including any future collective bargaining agreement and any change in bargaining representative. It also provides that TWA shall not enter into any other agreement which modifies, varies from, or is inconsistent with any of its terms or those of the Crew Complement Agreement, and it affords the flight engineer its own remedial procedure, including final and binding arbitration by a named arbitrator. The Individual Agreements were in effect when TWA terminated defendants as flight

engineers on TWA and denied their prior rights to the flight engineer position.

17. The arbitration clause of the Individual Agreement provides, inter alia, as follows:

"5. In the event that the Company threatens to sign any agreement or to take any action which denies or will, immediately or in the future, directly result in the denial of Flight Engineer's prior right to bid for and occupy the flight engineer's position, as provided herein and in the aforesaid Agreement of June 21, 1962, or which modifies, varies from or is inconsistent therewith, or if the Company has signed such an agreement or has taken such action, Flight Engineer shall have the right to assert his objection to the Company by notice in writing by registered mail or by telegram. The Company shall reply to said objection within four (4) calendar days by registered mail or telegram. If Flight Engineer deems said reply to be unsatisfactory, he may, within four (4) calendar days, submit his said objection to Nathan Feinsinger or if he is unable to serve, to James C. Hill, as arbitrator. * * *

"If it is determined by the arbitrator that the Company has signed or threatens to sign any agreement, or has taken any action or threatens to do so, which denies or will, immediately or in the future, directly result in a denial of Flight Engineer's prior right to bid for and occupy the flight engineer's position, as provided herein and in the aforesaid Agreement of June 21, 1962, the arbitrator shall direct such action by the Company as is necessary to assure full and continuous protection of Flight Engineer's prior right to bid for and occupy such position including, in addition to such protection, full compensation, where appropriate, for any actual loss of earnings that has directly resulted, or will in the future have directly resulted, from the Company's denial of such right. * * *

18. After the signing of the Individual Agreement, and while continuing to serve as a flight engineer, each of the defendants voluntarily applied for and was assigned a position as TWA Pilot First Officer, retaining his seniority as flight engineer. Defendants were not requested or required to surrender their Individual Agreements nor to waive their rights thereunder.

19. On various dates between June 3, 1969 and May 13, 1971, as more specifically set forth in paragraph 7 of the Complaint, each of the defendants herein was discharged by TWA and defendant John P. Carr resigned from his pilot position because of TWA's claim that he failed to complete student captain training satisfactorily.

20. Each of the defendants denied that his discharge for failure to qualify as a captain was a discharge for cause as a flight engineer within the meaning of Memorandum C and the Individual Agreement and duly made his claim of denial of his prior rights to the flight engineer position under the Individual Agreement. In June, 1971, each of the defendants requested arbitration under the Individual Agreement upon the denial of such claim.

21. TWA denied defendants' requests for arbitration in a letter dated July 2, 1971, a copy of which is annexed hereto as Exhibit A.

22. On July 22, 1971, defendants served upon TWA formal notices of intent to arbitrate under the Individual Agreement in accordance with Section 7503(c) of the New York Civil Practice Law and Rules.

23. The failure of defendants to qualify as captains is not and was not agreed to be just cause for their termination as flight engineers nor for the denial of their prior rights to the flight engineer position under the aforesaid Crew Complement and Individual Agreements.

24. The question of whether the defendants have been terminated for just cause within the meaning of said Agreements is determinative of the issue of denial of prior rights as claimed by the defendants, which issue the parties agreed to submit to the named arbitrator under the Individual Agreements.

25. The discharge of defendants by TWA during the term of the Agreement, whether the Individual Agreement was terminated thereby as to the defendants or thereafter, is subject to the grievance procedure which is provided therein for the determination of any claim made by them under the Agreement that they have been denied the rights guaranteed to them by the Agreement.

26. Plaintiff has unlawfully refused to submit the issue of the denial of defendants' claims to the flight engineer position to the arbitrator named in the Individual Agreement.

For a Third Separate and Distinct
Affirmative Defense, Defendants Allege:

27. Repeat and reallege each and every allegation contained in paragraph 7 through 26 of the Answer, with the same force and effect as if fully set forth herein.

28. Paragraph 8 of the Individual Agreement states:

"This Agreement shall be deemed to have been executed and delivered in the State of New York and shall be construed and enforced according to the laws of the State of New York, and all provisions thereof shall be administered according to the laws of such state."

29. The claims that the defendants seek to arbitrate arise under a common law agreement between TWA and each of the defendants. They do not arise under the Railway Labor Act or under any other laws of the United States. This Court does not have jurisdiction over the subject matter of the action.

For a Fourth Separate and Distinct
Affirmative Defense, Defendants Allege:

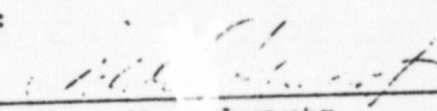
30. Repeat and reallege each and every allegation contained in paragraphs 1 through 29 of this Answer, with the same force and effect as if fully set forth herein.

31. The issue of laches, as alleged in the Complaint and denied in paragraph 1 herein, is an issue to be determined by the arbitrator designated in the Individual Agreement.

Dated: New York, N.Y.
March 21, 1972

O'DONNELL & SCHWARTZ
By:

TO:
Poletti, Freidin, Prashker,
Feldman & Gartner
Attorneys for Plaintiff
Trans World Airlines, Inc.
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Asher W. Schwartz
A Member of the Firm
Attorneys for Defendants
Charles W. Beaty, et al.
501 Fifth Avenue
New York, N.Y. 10017

PRE-TRIAL ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

TRANS WORLD AIRLINES, INC.,

Plaintiff,

-against-

CHARLES W. BEATY, WILLIAM R. BREEN,
JOHN P. CARR, FRANKLIN D. DACK,
DAVID LEWIS DAVIES, FRANK DAVIS,
CHESTER LEE EDWARDS, OTTO F.
FLEISCHMANN, ROBERT W. GAUGHAN,
E.T. GREENE, LAWRENCE RAYMOND JESSE,
KENNETH E. LENZ, EDWARD A. LEONHARD,
A.C. LOOMIS, Jr., VERNON C. MEYER,
JAMES MILTON MILLER, MARSHALL EARL
QUACKENBUSH, CHARLES V. TATE and
CHARLES E. WOOLSEY,

71 Civ. 3533

Before: Hon. John M.
Cannella,
U.S. District
Judge

Defendants.

-----x

The attorneys representing the parties to this action having appeared before Magistrate Sol Schreiber at the direction of the Court for pre-trial conferences on several occasions, and before the Honorable John M. Cannella, U.S.D.J., on October 23, 1974, pursuant to Rule 16 of the Federal Rules of Civil Procedure, the following action was taken:

Jurisdiction

(i) The parties agreed that (a) plaintiff's action for a declaratory judgment and a permanent injunction against the arbitration proceeding sought by defendants arises under the Railway Labor Act, as amended, 45 U.S.C. Sec. 151, et seq., and under

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the New York Civil Practice Law and Rules Sections 7502, 7503, that (b) this Court has jurisdiction of the action under 28 U.S.C. Sections 1331, 1332, 1337, 2201 and 2202, and that (c) the matter in controversy exceeds the sum and value of \$10,000, exclusive of interest and costs.

Pleadings

(ii) The parties agreed that the trial of this action shall be based upon the pleadings as amended and upon this pre-trial order.

Facts Not In Dispute

(iii) The parties agreed that the following facts are not in dispute in this action:

(1) Plaintiff Trans World Airlines, Inc. ("TWA") is a corporation duly organized and existing under the laws of the State of Delaware and duly qualified to do business in the State of New York, having its principal office and place of business at 605 Third Avenue, in the County and State of New York.

(2) Each defendant is a former employee of TWA and each defendant has the residence set forth below his name.

CHARLES W. BEATY
13855 West 67th Street
Shawnee, Kansas 66216

LAWRENCE RAYMOND JESSE
8403 West 98 Circle
Overland Park, Kansas 66212

WILLIAM K. BREEN
7343 Mackey Street
Overland Park, Kansas 66204

KENNETH E. LENZ
9662 Dodson Way
Villa Park, California 92667

JOHN P. CARR
2006 Lathan Street, #56
Mountain View, California 94040

EDWARD A. LEONHARD
6809 North Park Plaza
Kansas City, Missouri 64151

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FRANKLIN D. DACK
1219 Circle Court
McHenry, Illinois 60050

DAVID LEWIS DAVIES
Wolf Road, Taunton Lakes
Marlton, New Jersey 08053

FRANK DAVIS
703 Gulf Road
Lamar, Missouri 64759

CHESTER LEE EDWARDS
1730 North 78 Terrace
Kansas City, Kansas 66112

OTTO F. FLEISCHMANN
212 Mimosa Circle
Ridgefield, Connecticut 06877

ROBERT W. GAUGHAN
3526 West 92nd Place
Leawood, Kansas 66206

E. T. GREENE
10401 Sagamore Road
Leawood, Kansas 66206

A.C. LOOMIS, Jr.
1320 S.E. 4th Street
Deerfield Beach, Florida 33441

VERNON C. MEYER
1901 N.W. 45 Street
Kansas City, Missouri 64150

JAMES MILTON MILLER
371 Silvera Avenue
Long Beach, California 90814

MARSHALL EARL QUACKENBUSH
18602 Nubia
Covina, California 91722

CHARLES V. TATE
812 South Pacific Highway
Talent, Oregon 97540

CHARLES E. WOOLSEY
1801 Third Street
LaVerne, California 91750

(3) At all times pertinent hereto, TWA has employed flight crew members in the classifications of Flight Engineer, Pilot First Officer and Captain.

(4) Prior to March 19, 1968, the Flight Engineers International Association, AFL-CIO ("FEIA"), was recognized by TWA as the collective bargaining representative under the Railway Labor Act ("RLA"), 45 U.S.C. Section 151 et seq., for TWA's employees in the class or craft of Flight Engineer. TWA and FEIA executed collective bargaining agreements, covering the rates of pay, rules and working conditions of TWA's Flight Engineers, on July 29, 1958, November 21, 1962, and February 16, 1966 (Joint

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Exhibits 1, 2 and 3, respectively). (All Joint Exhibits listed herein are incorporated in and made a part of these "Facts Not In Dispute" and are attached to other documents heretofore filed with this Court as indicated under "Exhibits" infra p. 18.)

(5) At all times pertinent hereto, the Air Line Pilots Association, International ("ALPA") has been recognized by TWA as the collective bargaining representative under the RLA for TWA's employees in the class or craft of Pilots (including Pilot First Officers and Captains).

(6) Prior to February 21, 1961, a dispute had arisen on the properties of a number of U.S. scheduled air carriers in respect to the crew complement on jet aircraft. The dispute involved FEIA, ALPA, TWA and other airlines. The dispute was investigated by a Presidential Commission which was established by Executive Orders of the President, dated February 21 and 23, 1961 (Joint Exhibit 4), and which issued two reports dated May 24, 1961 (Joint Exhibit 5) and October 17, 1961 (Joint Exhibit 6) respectively, containing recommendations for the resolution of the said controversy.

(7) On June 21, 1962, TWA and FEIA, acting on behalf of the craft or class of Flight Engineers, entered into a Crew Complement Agreement in settlement of the above-described dispute. That Agreement appears in Joint Exhibit 2, pp. 92-106. All TWA Flight Engineers then employed or on furlough were listed in Memoranda A or A1, respectively, which was attached to the

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aforesaid Crew Complement Agreement (Joint Exhibit 2, pp. 97-102), and are hereinafter collectively referred to as "A and A1 Flight Engineers." Each of the defendants herein was, at such time, employed by TWA as a Flight Engineer, and each was an "A Flight Engineer."

(8) Memorandum C to the aforesaid Crew Complement Agreement (Joint Exhibit 2, p. 105) obligated TWA (1) to offer to all A and A1 Flight Engineers the "prior right" as against flight crew members other than Flight Engineers to bid for and occupy all Flight Engineer positions required by the Company's operations until their retirement, voluntary resignation or discharge for cause, and (2) to enter into an individual agreement with each such Flight Engineer to that effect. The reason for such individual agreements was that the parties envisioned the possibility that FEIA might be replaced as the representative of the Flight Engineers by an organization disinclined to continue the Flight Engineers' "prior rights" in succeeding agreements or to enforce them effectively. Some time in August 1962, TWA and FEIA reached agreement as to the form of such individual agreements, including an arbitration provision which declared, among other things, that the agreement would terminate upon the Flight Engineer's retirement, voluntary resignation or discharge for cause (Joint Exhibit 7).

(9) During the negotiations preceding their 1962 Crew Complement Agreement, their 1962 Working Agreement, and their

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agreement as to the form of the individual agreements, FEIA and TWA did not discuss the meaning of the phrase "discharge for cause" used in Memorandum C of the Crew Complement Agreement and in the individual agreements.

(10) During the period of the negotiations described above, disputes over Flight Engineer discharges for cause were subject exclusively to the grievance procedure established in the basic working agreement between TWA and FEIA, including the right to appeal to the TWA Flight Engineers' System Board of Adjustment. Disputes over Flight Engineer discharges for cause were subject to such grievance procedure for as long thereafter as FEIA continued to represent TWA's Flight Engineers, and to the grievance procedure established in the TWA-ALPA basic working agreement, including appeal to the TWA Pilots' System Board of Adjustment, once ALPA became the representative of such employees (see paragraph 14 infra).

(11) On September 25, 1962, TWA and ALPA, acting on behalf of the class or craft of Pilots, entered into a Supplemental Memorandum ("ALPA Crew Complement Agreement") (Joint Exhibit 8), in settlement of the dispute described in paragraph 6 above, which permitted, inter alia, under conditions described therein, operation of turbo-jet aircraft with flight deck crews consisting of two Pilots and one Flight Engineer in lieu of the three Pilot-one Flight Engineer crew theretofore required.

(12) During the period April 1963 to October 1963, each of the defendants herein, then employed as a Flight Engineer,

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signed an individual agreement with TWA, pursuant to the TWA-FEIA Crew Complement Agreement (see paragraph 8 supra). During the period 1963-1965, A and Al Flight Engineers, including the defendants, satisfactorily completed certain pilot training which qualified them for Flight Engineer positions on turbo-jet aircraft operated by three-man crews. Pursuant to the ALPA Crew Complement Agreement, such Flight Engineers were placed on the TWA Pilots' System Seniority List below all Pilots appearing on that list as of the date of that Agreement but above any Pilot hired thereafter, with an asterisk or other symbol to indicate their status; such Flight Engineers have maintained their relative positions in respect of one another on the Pilots' System Seniority List.

(13) During 1966 and 1967, each of the defendants, theretofore serving as a Flight Engineer, voluntarily bid for and was assigned to Pilot First Officer training and, upon satisfactory completion of that training, to a position as a TWA Pilot First Officer, under the applicable TWA-ALPA collective bargaining agreement. Each of the said defendants continued to serve as a TWA Pilot First Officer until he entered training for upgrading to TWA Captain (see paragraph 17 infra.)

(14) On October 26, 1967 ALPA filed an application with the National Mediation Board ("NMB") for representation of TWA's employees in the craft or class of Flight Engineers, and, on March 19, 1968, as the result of an election among TWA's

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Flight Engineers, ALPA was certified as the collective bargaining representative under the RLA for such employees. On May 18, 1968, TWA and ALPA executed a single collective bargaining agreement covering the rates of pay, rules and working conditions of TWA's Flight Engineers and Pilots; subsequent agreements were executed on January 23, 1970 and July 7, 1972 (Joint Exhibits 9, 10, and 11, respectively).

(15) The last TWA Flight Engineers' System Seniority List was published in January 1968, and thereafter the only TWA flight deck crew seniority list on which Flight Engineers, including the defendants herein, appeared was the TWA Pilots' System Seniority List.

(16) Pursuant to Section 204 of the Railway Labor Act, 45 U.S.C. Section 184, the collective bargaining agreements between TWA and ALPA have, at all times pertinent hereto, provided for the processing of a grievance involving discharge to a TWA Pilots' System Board of Adjustment (the "System Board"). The System Board is composed of four members, two designated by TWA and two by ALPA; in the event of a deadlock, a fifth neutral member (the "Referee") is selected.

(17) Each of the nineteen defendants herein voluntarily entered training for upgrading from TWA Pilot First Officer to TWA Captain; the first such defendant entered Captain training in August 1966, and the last entered such training in March 1970.

(18) At the time each defendant voluntarily bid

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for and was assigned to training and then to a position as TWA Pilot First Officer, and at the time each defendant voluntarily accepted assignment to training for upgrading from TWA Pilot First Officer to TWA Captain, he was aware that TWA intended to discharge him (and not to permit him to return to his former Flight Engineer position) if he entered Captain training and failed to complete it satisfactorily.

(19) TWA has never allowed a Pilot to remain in its employ for the purpose of serving as a flight deck crew member after such Pilot has failed satisfactorily to complete training for upgrading from TWA Pilot First Officer to TWA Captain, and has consistently discharged such Pilot from its employ or allowed him to resign; during the period 1965-1972, at least 60 such Pilots were terminated or allowed to resign following such failure. The uniform course of decision of the System Board, in at least 24 cases between 1965 and 1972, has been that a TWA Pilot First Officer who fails to satisfactorily complete Captain training after having been given a fair and adequate opportunity to do so was properly discharged for cause.

(20) During 1970 and 1971, TWA determined that each defendant, having entered TWA Captain training, had failed satisfactorily to complete such training after having been given a fair and adequate opportunity to do so. Each defendant was thereupon allowed to resign or was discharged as a TWA employee, allegedly for cause. The dates on which each such defendant (a)

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entered the TWA Captain training program and (b) resigned or was discharged upon his alleged failure to complete that training satisfactorily is as follows:

<u>Defendant</u>	<u>Date of Entry Into Captain Training</u>	<u>Date of Resignation (R) Or Discharge (D)</u>
Charles W. Beaty	March 2, 1970	D-January 25, 1971
William R. Breen	September 29, 1969	D-June 19, 1970
John P. Carr	January 5, 1970	R-April 13, 1970
Franklin D. Dack	March 2, 1970	D-February 16, 1971
David Lewis Davies	March 2, 1970	D-July 8, 1970
Frank Davis	January 5, 1970	D-November 10, 1970
Chester Lee Edwards	September 16, 1968	D-June 3, 1969
Otto F. Fleischmann	November 3, 1969	D-July 20, 1970
Robert W. Gaughan	September 29, 1969	D-June 1, 1970
E. T. Greene	November 3, 1969	D-June 9, 1970
Lawrence Raymond Jesse	January 19, 1970	D-March 26, 1971
Kenneth E. Lenz	January 19, 1970	D-November 17, 1970
Edward A. Leonhard	January 19, 1970	D-December 23, 1970
A. C. Loomis, Jr.	March 2, 1970	D-November 24, 1970
Vernon C. Meyer	March 2, 1970	D-February 8, 1971
James Milton Miller	September 29, 1969	D-June 15, 1970
Marshall Earl Quackenbush	January 19, 1970	D-March 31, 1970
Charles V. Tate	January 19, 1970	D-September 29, 1970
Charles E. Woolsey	August 12, 1968	D-May 13, 1971

(21) Following the resignation and discharges referred to above, eight of the defendants filed bids for Flight Engineer positions. The dates of such bids, and the contract under which each bid was purportedly made, are as follows:

<u>Defendant</u>	<u>Date of Bid</u>	<u>Contract Reference</u>
Charles W. Beaty	January 29, 1971	ALPA Crew Comp. Agreement
William R. Breen	June 24, 1970	Unstated
Chester Lee Edwards	June 4, 1969	Unstated
Lawrence Raymond Jesse	March 30, 1971	Unstated
Kenneth E. Lenz	November 13, 1970	ALPA Working Agreement

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<u>Defendant</u>	<u>Date of Bid</u>	<u>Contract Reference</u>
Edward A. Leonhard	January 29, 1971	ALPA Crew Comp. Agree- ment
Vernon C. Meyer	Undated	ALPA Crew Comp. Agree- ment
Charles E. Woolsey	May 12, 1971	Unstated

Copies of said bids are incorporated as Joint Exhibit 12.

(22) Following the resignation and discharges referred to above in paragraph 20, defendants Carr, Davis and Quackenbush did not file a grievance, but each of the other defendants filed a grievance under the TWA-ALPA working agreement complaining of his termination for failure to complete training for upgrading to Captain, and TWA thereafter denied each such grievance, on the dates indicated below:

<u>Defendant</u>	<u>Date Grievance Filed</u>	<u>Date of TWA Denial</u>
Charles W. Beaty	February 2, 1971	March 12, 1971
William R. Breen	June 30, 1970	August 3, 1970
Franklin D. Dack	February 18, 1971	March 8, 1971
David Lewis Davies	July 14, 1970	July 31, 1970
Chester Lee Edwards	June 13, 1969	August 27, 1969
Otto F. Fleischmann	July 23, 1970	August 10, 1970
Robert W. Gaughan	June 13, 1970	September 2, 1970
E. T. Greene	June 26, 1970	August 19, 1970
Lawrence Raymond Jesse	April 2, 1971	May 7, 1971
Kenneth E. Lenz	November 13, 1970	November 30, 1970
Edward A. Leonhard	December 31, 1970	February 22, 1971
A. C. Loomis, Jr.	December 2, 1970	January 11, 1971
Vernon C. Meyer	February 16, 1971	March 12, 1971
James Milton Miller	June 24, 1970	July 15, 1970
Charles V. Tate	October 10, 1970	October 26, 1970
Charles E. Woolsey	May 20, 1971	Grievance Withdrawn

Defendant Woolsey, who had originally entered Captain training on August 12, 1968, had been terminated on May 13, 1969, and had been returned to the program by the System Board in July 1970 on the

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ground that he had not received a fair and adequate opportunity to complete Captain training, withdrew his latest grievance on June 8, 1971. Following the response of TWA, each of the other defendants processed his grievance to the System Board under the TWA-ALPA agreement.

(23) In a decision dated October 29, 1969 the System Board denied the grievance of defendant Edwards, ruling that he had been properly discharged for cause. Defendant Davies withdrew his grievance from the System Board on October 20, 1970. By decisions dated February 27, 1971, the System Board deadlocked on the grievances of defendants Fleischmann, Gaughan, Greene and Miller; the grievances were then submitted through ALPA to a five-member Board (Laurence E. Seibel, Neutral Referee), which denied them in a decision dated August 18, 1971, ruling that each of the grievants had been properly discharged for cause.

(24) During June 1971, each of the defendants herein, except defendants Gaughan and Greene, sent to TWA a letter (Joint Exhibit 13) claiming that the Company had violated his individual agreement (see paragraphs 8 and 12, supra) by refusing to assign him to a Flight Engineer position following his failure to satisfactorily complete training as a TWA Captain and requesting arbitration of such claim pursuant to the arbitration provisions of said individual agreement. This was the first time that any of the defendants had raised such a claim or requested arbitration under the individual agreement. By letter dated July 2,

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1971 (Joint Exhibit 14), TWA rejected these requests for arbitration.

(25) By notices dated July 22, 1971, and served upon TWA on July 30, 1971, pursuant to Section 7503(c) of the New York Civil Practice Law and Rules, the defendants announced their intention to demand arbitration of their claim under their individual agreements. Each such notice also contained the following paragraph:

"PLEASE TAKE FURTHER NOTICE that unless within ten days after service of this notice of intention to arbitrate you apply to stay the arbitration herein, you shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time."

Copies of the said notices are incorporated herein as Joint Exhibit 15.

(26) TWA has not participated in the arbitration sought by defendants and has not made or been served with an application to compel arbitration except as specified in paragraph 25 above.

(27) The grievances that defendants Beaty, Breen, Dack, Jesse, Lenz, Leonhard, Loomis, Jr., Meyer and Tate had submitted to the System Board under the TWA-ALPA agreement challenging their discharges explicitly raised the following two issues: (1) whether the grievants had had a fair and adequate opportunity to complete Captain training successfully and/or whether they deserved a "second chance" to complete the Student

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Captain training program; and (2) whether, assuming they had received such an opportunity and did not deserve a "second chance", they nevertheless had a right to return to Flight Engineer positions. ALPA represented the defendants' claims in respect to the first issue above, as it had previously done in the grievance proceedings of defendants Edwards, Fleischmann, Gaughan, Greene and Miller. The defendants' claims in respect of the second issue were represented by their own counsel.

(28) In respect of the first issue stated above, the four-member System Board denied the grievances of defendants Beaty, Dack, Jesse, Lenz and Loomis, Jr., deadlocked on the grievances of defendants Breen, Leonhard and Tate, and sustained the grievance of defendant Meyer. On September 28, 1972, the five-member System Board (Arthur Stark, Neutral Referee), denied the grievances of defendants Breen and Tate in respect of the first issue stated above; on October 19, 1972, that same System Board sustained the grievance of defendant Leonhard on that issue, finding that he had not had a fair and adequate opportunity to complete Captain training.

(29) Defendants Leonhard and Meyer, whose grievances were sustained on the first issue stated above, were returned to Captain training. TWA thereafter determined that Leonhard had improperly refused to return to work from a medical leave and discharged him a second time, allegedly for cause, effective January 19, 1974; a grievance complaining of his

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termination was filed with the System Board and subsequently withdrawn. TWA also determined that Meyer had again failed to complete Captain training successfully, and discharged him a second time, allegedly for cause, effective December 1, 1972; a grievance complaining of his termination was filed with the System Board and subsequently withdrawn.

(30) In respect of the second issue stated in paragraph 27 above (right to return to a Flight Engineer position after failing Captain training), the parties to the pending grievances (those listed in paragraph 27 above, except that of defendant Meyer, which was withdrawn) in an agreement dated March 23, 1972 (Joint Exhibit 16), stipulated that all such grievances would be consolidated for hearing and determination by the five-member System Board (Arthur Stark, Neutral Referee), without prior submission to the four-member panel. Hearings on this issue were held during March, May, and June 1972. The position taken by ALPA in these proceedings was that TWA Pilot First Officers, including former A and A1 Flight Engineers, who fail to successfully complete training for upgrading to Captain have no right to return to the Flight Engineer position. The positions taken by TWA and by the grievants in the System Board proceedings are as stated in the decision of the System Board. On March 2, 1973, the System Board, with the Neutral Referee not voting, denied all the grievances, including those of defendants Beaty, Breen, Dack, Jesse, Lenz, Leonhard, Loomis, Jr., and

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Tate, ruling that each had been properly discharged for cause (Joint Exhibit 17).

Issues To Be Tried

(iv) The parties agreed that the only issue of fact to be litigated in this action is as follows:

Whether, during the negotiations which led to their 1962 Crew Complement Agreement, to their November 1962 Working Agreement, and to their agreement as to the form of individual agreements with the individual defendants, FEIA and TWA understood and intended that the determination as to whether there was cause for the discharge of a Flight Engineer was to be made in every case by the System Board of Adjustment under the applicable working agreement, by the arbitrator appointed under the individual agreement, or as said arbitrator would determine under the individual agreement.

(v) The parties did not agree on a statement of the issue of law to be litigated in this action, and have each proposed their own formulations of the issue, as follows:

(1) Plaintiff:

Whether the defendants have the right, under their individual agreements with TWA, to arbitrate the claims asserted in their notices of intent to arbitrate.

(2) Defendants:

Whether, under an individual agreement between TWA and each defendant, such defendant had the right, at the time

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he requested arbitration, to arbitrate his claim that TWA's failure to assign him to a Flight Engineer position upon his termination by TWA as a Pilot, and the assignment of that position to a Pilot, constituted a denial of his prior right to a Flight Engineer position.

Positions of the Parties

(vi) The parties agreed that the following states their respective positions with respect to the issues to be tried:

(1) Position of Plaintiff:

(a) No Arbitration Agreement in Effect. The nineteen defendants, formerly employed as Flight Engineers and then as Pilots by TWA, served individual notices, pursuant to Section 7503 of the New York Civil Practice Law and Rules, of their intent to arbitrate, under individual arbitration agreements between TWA and each such defendant, their claims to continued employment as TWA Flight Engineers following their resignations or discharges for cause while serving as Pilots. Each of the said notices stated that, unless TWA made an application for a stay of arbitration within ten days after service of such notice, TWA would thereafter be precluded from challenging the existence of a valid arbitration agreement or the defendants' compliance therewith. The individual agreements under which the defendants seek to arbitrate their claims were entered into pursuant to a 1962 agreement with the Flight Engineers International Association, AFL-CIO, TWA Chapter, the defendants' former collective bargaining

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representative under the Railway Labor Act. The said individual agreements provided that each such defendant would have a "prior right," as against flight crew members other than Flight Engineers, to bid for and occupy all Flight Engineer positions required by TWA's operations, and further provided that if TWA acted or threatened to act in a manner which would constitute a denial of such "prior right," the Flight Engineer could assert his objections before a designated arbitrator in a specified manner. The said individual agreements, including the arbitration clauses thereof, terminate, by their express terms, upon voluntary resignation or discharge for cause. Each defendant, while serving as a Pilot, either voluntarily resigned or was discharged for cause, terminating his individual agreement with TWA, including the arbitration clause thereof, subject only to a determination pursuant to the contractual grievance procedure, culminating in a right of appeal to the System Board of Adjustment, that his discharge was not for cause under the applicable collective bargaining agreement. The defendants' grievances complaining of their termination of employment, including their claims for reinstatement to Flight Engineer positions, where filed, have been finally determined adversely to the defendants, pursuant to the grievance procedure established in the applicable collective bargaining agreements, either by a ruling of the System Board of Adjustment that they had been discharged for cause or by the withdrawal of their appeal to the System Board, leaving undis-

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turbed a prior determination that they had been discharged for cause. The individual agreements between TWA and each defendant, including the arbitration provisions thereof, having terminated, there is no agreement between TWA and any of the defendants to arbitrate the claims raised in their notices of intent to arbitrate.

(b) Defendants' Claims Not Timely. The claims sought to be arbitrated by the defendants are barred by laches and by the defendants' failure to assert such claims in the time and manner provided in the arbitration agreements.

(c) Court Has Jurisdiction of Action. This Court has jurisdiction, because of diversity of citizenship, and under the Railway Labor Act, to determine that TWA and each of the defendants, respectively, are not parties to an existing arbitration agreement, and that the defendants' claims are barred by laches or by their failure to assert such claims in the time and manner provided in the arbitration agreements, and to permanently stay any arbitration under such agreements.

(2) Position of Defendants:

(a) Defendants Had Right to Arbitrate Claims. The defendants contend in this proceeding that each of them had the right, under an individual agreement between TWA and each of them, to arbitrate his claim that TWA's failure to assign him to a Flight Engineer position upon his termination by TWA as a Pilot, constituted a denial of his prior right to a Flight Engineer

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position. Defendants assert that they had not voluntarily resigned or been discharged for cause from their positions on the Flight Engineers' seniority roster within the meaning of their individual agreements, and that their discharges as Flight Engineers denied them their prior rights to the Flight Engineer position.

(b) Defendants' Claims Were Timely. The defendants contend that they are not barred from arbitrating their claims under the individual agreements by alleged laches or failure to assert their claims in the time and manner provided therein.

(c) Defendants' Claims Should Be Submitted To Arbitrator. The defendants contend (i) that the proper tribunal to determine whether the defendants had voluntarily resigned or been discharged for cause, within the meaning of the individual agreements, and whether they are barred from arbitration by alleged laches or by their alleged failure to assert their claims in the time and manner provided in the individual agreements, is the arbitrator named in each of those agreements, and (ii) that if the Court finds that such questions are not within the scope of the arbitrator's authority, the right of the defendants to arbitrate the issue of whether their discharges or resignations under the TWA-ALPA Working Agreement deny them their prior rights under their individual agreements was not terminated by such resignations or discharges under the TWA-ALPA Working Agreement.

Claims For Damages and Relief

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(vii) The parties agreed that the following are all of the claims for damages or for other relief in this action:

(1) On Behalf of Plaintiff: Plaintiff prays that this Court (a) render a declaratory judgment determining that TWA and each of the defendants, respectively, are not parties to an existing arbitration agreement or, in the alternative, that the defendants' claims are barred by laches or by their failure to assert such claims in the time and manner provided in the arbitration agreements, (b) order that the arbitration proceedings sought by defendants be permanently stayed and enjoined, and that their notices of intent to arbitrate be withdrawn, and (c) grant such other, further or different relief to which the plaintiff may be entitled in the premises.

(2) On Behalf of Defendants: Defendants pray that this Court dismiss the instant action and order that the arbitration proceedings initiated by defendants proceed under the jurisdiction of the individual arbitrator provided for in the individual agreements. If this Court determines that the questions raised by the plaintiffs are not within the scope of the arbitrator's authority, the defendants pray that this Court will determine either (a) that the defendants were not discharged for cause nor did they voluntarily resign from their positions on the Flight Engineer seniority roster within the meaning of their individual agreements, or (b) that the issue of whether the discharges or resignations of defendants under the TWA-ALPA Working Agreement

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has denied them their prior rights to the Flight Engineer position within the meaning of the individual agreements shall be submitted to the individual arbitrator appointed under those agreements. Finally, defendants pray that this Court grant it costs and such further and different relief to which defendants may be entitled in the premises.

Witnesses

(viii) The parties agreed that the following witnesses may be called:

(1) By the Plaintiff: David J. Crombie

(2) By the Defendant! None

(ix) The following is a list of the parties' Joint Exhibits incorporated and made a part of the "Facts Not In Dispute" (see pp. 2-13 supra). Each of these Exhibits was previously filed with this Court along with "Plaintiffs' Pre-Trial Memorandum" dated April 8, 1974, and was listed by the number which follows the exhibit title below:

- (1) TWA-FEIA collective bargaining agreement, dated July 29, 1958 (Exhibit No. 1 of Plaintiff's Pre-Trial Memorandum dated April 8, 1974).
- (2) TWA-FEIA collective bargaining agreement, dated November 21, 1962 (No. 2).
- (3) TWA-FEIA collective bargaining agreement, dated February 18, 1966 (No. 3).
- (4) Executive Orders of the President, dated February 21, 1961, and February 23, 1961 (No. 4).
- (5) Report of Presidential Commission, dated May 24, 1961 (No. 5).

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- (6) Report of Presidential Commission, dated October 17, 1961 (No. 6).
- (7) Flight Engineer individual agreement (No. 8).
- (8) TWA-ALPA Supplemental Memorandum, dated September 25, 1962 (No. 7).
- (9) TWA-ALPA collective bargaining agreement, dated May 18, 1968 (No. 9).
- (10) TWA-ALPA collective bargaining agreement, dated January 23, 1970 (No. 10).
- (11) TWA-ALPA collective bargaining agreement, dated July 7, 1972 (No. 11).
- (12) Bids for Flight Engineer positions submitted by certain defendants (No. 12).
- (13) Defendants' letters to TWA requesting arbitration (No. 16).
- (14) Letter from TWA rejecting Defendants' arbitration requests, dated July 2, 1971 (No. 17).
- (15) Defendants' notices of intent to arbitrate, dated July 22, 1971 (No. 18).
- (16) TWA-ALPA-FEIA System Board Agreement, dated March 23, 1972 (No. 23).
- (17) Decision of five-member System Board (Stark as Referee) on grievances of certain defendants dated March 2, 1973 (No. 25).

Plaintiff's Exhibits

(x) The plaintiff intends to offer into evidence the following exhibits, copies of which are attached hereto:

- (1) Letter from Asher Schwartz to David Crombie, dated July 12, 1962, with five-page attachment; and
- (2) Letter from Asher Schwartz to Jesse Freidin, dated August 16, 1962, with four-page attachment.

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Miscellaneous

(xi) The parties agreed that the Court shall treat the transcript of the testimony of Harrison S. Dietrich before the TWA Pilots' System Board of Adjustment on March 24, 1972 and May 31, 1972 (listed and filed as "Exhibit 53" to "Plaintiff's Pre-Trial Memorandum" dated April 8, 1974) as a deposition under the Federal Rules of Civil Procedure, and that each party waive signing, certification, sealing and filing.

Dated: New York, New York
November 8, 1974

POL TI FREIDIN PRASHKER
FELDMAN & GARTNER
Attorneys for Plaintiff

By /s/ Herbert Prashker
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By /s/ Asher W. Schwartz
A Member of the Firm
501 Fifth Avenue
New York, New York 10017

SO ORDERED:

/s/

U.S.D.J.

SECTION II (B), PAGE FOUR OF THE TWA-FEIA COLLECTIVE BARGAINING AGREEMENT, DATED JULY 29, 1958 (EXCERPT FROM JOINT EXHIBIT 1, PRE-TRIAL ORDER)

ation and use of all types of equipment without regard to any other name or description by which the flight engineering function may be designated: Provided, however, that if the regulation of any government agency requires that, in the use and operation of any specified type of equipment, all members of a minimum cockpit flight crew of three or more, on such equipment shall possess specified qualifications and/or specified licenses which are not solely incident or necessary to the performance of the flight engineering function, the member of such minimum crew who is to, or does, perform the flight engineering function shall be selected and assigned from the seniority list, covered by this Agreement, of Flight Engineers, who may possess or acquire the qualifications and/or licenses required by such regulations: Provided, further that the Company will not enter into any collective bargaining agreement, with any other organization or association, covering employees who perform the flight engineering function so long as the certification of the Association as bargaining representative for such employees remains in effect: and Provided, further that "the flight engineering function" as used herein is defined to mean that function as it is generally known.

The allocation of cockpit duties will be determined by the Company.

For the purpose of the foregoing, the following are not considered part of the minimum flight crew: crew member carried (1) because of the nature of the route (such as Navigators), (2) because of the schedule being flown (such as more than two Pilots on multiple crew operation), (3) as supervisors or employees to instruct or check crew member proficiency, and (4) as cabin attendants and other service employees.

SECTION II
DEFINITIONS

As used in this Agreement, the term

(A) "Student Flight Engineer" means an employee of the Company who possesses a valid CAA aircraft and aircraft engine mechanic's certificate and who is undergoing training on a full time basis for the position of Flight Engineer.

(B) "Flight Engineer" means an employee designated by the Company to serve as such and who is responsible for assuring the airworthy condition of the aircraft on which he is to serve before its departure; for the safe and efficient mechanical operation of the aircraft and its components while in flight, including recognition and correction of malfunctioning to the extent practicable; for the manipulation of its engineering controls; and for all related ground and flight duties as assigned; and who meets all government and Company requirements for the position of Flight Engineer and who possesses a currently valid aircraft and aircraft engine mechanic's certificate.

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(C) "Month" means the period from and including the first day of, to and including the last day of, each calendar month of the year; except January shall be considered as January 1 through January 31; February shall be considered as January 31 through March 1; March shall be considered as March 2 through March 31. All other months shall be calendar months.

(D) In computing the hours of a Flight Engineer (over two years service) for flying pay purposes the greatest of the following shall be used on all flights:

- (1) Actual time block-to-block
- (2) Scheduled time block-to-block
- (3) Minimum of one (1) hour for each four (4) trip hours as defined in Section II (5). This shall be paid as an extension of the last leg flown. (This provision (3) shall apply only to reciprocating equipment).

In determining actual or scheduled under (1) or (2) above, such time shall be calculated on a leg-by-leg basis.

(E) "Day Flying" (Transcontinental) means all flying between the hours of 6:00 A.M. and 6:00 P.M., Standard Time, and "Night Flying" (Transcontinental) means all flying between the hours of 6:00 P.M. and 6:00 A.M., Standard Time. In all cases, the time of departure used herein shall be the time of block departure of the airplane. When changes in the time zone occur in flight, the time zone at the station of last take-off shall be used in computing the day and night flying time for that leg of the trip.

(F) "Miscellaneous Flying" means flying other than scheduled, charter, self-training, or staff instruction flights. Any test or ferry flying performed by a Flight Engineer in connection with the flight to which he is assigned will not be considered as miscellaneous flying.

(G) A "Run" means a flight or combination of flights as designated by flight number(s) and turn station(s), on which a Flight Engineer is regularly scheduled, including the domicile at which the Flight Engineer who flies the run is based.

(H) "Deadhead Time" is that time spent at the direction of the Company traveling by any means of transportation as a non-operating crew member to or from protecting a flight; except that no time spent as a member of a multiple crew will be considered as deadhead time.

(I) "Domicile" means a location where Flight Engineers are permanently based.

(J) "Special Assignment" is an assignment to duty as defined in (B) above other than to miscellaneous flying, self-training, or to charter or scheduled runs out of the domicile on the operation to which a Flight Engineer is permanently assigned.

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SECTION II (B), PAGE TWO OF THE TWA-FEIA COLLECTIVE BARGAINING AGREEMENT, DATED NOVEMBER 21, 1962 (EXCERPT FROM JOINT EXHIBIT 2 PRE-TRIAL ORDER)

or necessary to the performance of the flight engineering function, the member of such minimum crew who is to, or does perform the flight engineering function shall be selected and assigned from the seniority list, covered by this Agreement, of Flight Engineers, who may possess or acquire the qualifications and/or licenses required by such regulations: Provided, further that the Company will not enter into any collective bargaining agreement, with any other organization or association, covering employees who perform the flight engineering function so long as the certification of the Association as bargaining representative for such employees remains in effect except in the terms set forth in the Memorandum of Agreement and attachments thereto dated June 21, 1962 and as set forth in the Supplemental Memorandum between the Company and the Air Line Pilots Association, International, dated September 25, 1962; and Provided, further that "the flight engineering function" as used herein is defined to mean that function as it is generally known.

The allocation of cockpit duties will be determined by the Company.

For the purpose of the foregoing, the following are not considered part of the minimum flight crew: crew member carried (1) because of the nature of the route (such as Navigators), (2) because of the schedule being flown (such as more than two pilots on multiple crew operation), (3) as supervisors or employees to instruct or check crew member proficiency, and (4) as cabin attendants and other service employees.

SECTION II
DEFINITIONS

- (A) "Student Flight Engineer" means an employee of the Company who is undergoing training on a full time basis for the position of Flight Engineer.
- (B) "Flight Engineer" means an employee, including the occupant of the third seat on three-man turbo-jet crews, who is responsible while in flight or enroute for the safe and efficient mechanical, electrical and electronic functioning and the airworthy condition of the aircraft, irrespective of the means of propulsion, and its components (including recognition and correction of their malfunctioning) and for manipulation of its engineering controls and all related ground and

flight duties as assigned and who is properly qualified to serve as such and holds such valid and currently effective certificates as are required by applicable Federal regulations, this Agreement and the Memorandum of Agreement dated June 21, 1962.

The routine duty assignments of Flight Engineers qualified and trained in accordance with the Memorandum of Agreement dated June 21, 1962, shall utilize the qualifications referred to therein so as to provide maximum safety, crew-coordination, and efficiency. Such duties shall not conflict with the performance of flight engineering duties, and shall not include manipulation of the primary flight controls. At the direction of the Captain, such Flight Engineers may be required to perform the following duties:

- (1) Make the pre-flight inspection of the aircraft, and consult with the Captain on the mechanical condition of the aircraft; consult with the Captain and First Officer on the flight plan, fuel plan, weather, and anticipated operation of the flight.
 - (2) Assist in pre-takeoff computations involving performance of the aircraft.
 - (3) Read the checklist and answer for items applicable to his duty station.
 - (4) Assist in maintaining required in-flight forms and records.
 - (5) Assist in radio communications functions.
 - (6) Assist in enroute, replanning and navigational functions when required.
 - (7) Assist in traffic look-out during visual approach and departure operations.
 - (8) Assist in monitoring of flight instruments with respect to their normal functioning during instrument approach and departure operations.
- (C) "Month" means the period from and including the first day of, to and including the last day of, each calendar month of the year; except January shall be considered as January 1 through January 30; February shall be considered as January 31 through March 1; March shall be considered as March 2 through March 31. All other months shall be calendar months.

SECTION XXII (W), PAGE SEVENTY-FIVE OF THE TWA-FEIA COLLECTIVE
BARGAINING AGREEMENT, DATED NOVEMBER 21, 1962 (EXCERPT FROM
JOINT EXHIBIT 2, PRE-TRIAL ORDER)

mitted to attend any investigation of an aircraft accident in which a Flight Engineer is an operating crew member.

- (O) When in flight, Flight Engineers shall be subject only to orders from the pilot-in-command.
- (P) Any Flight Engineer who becomes sick or injured as a result of having been outside the United States on Company business, due to causes related to his occupation or to the living and health conditions peculiar to the countries in which he performed services, shall be properly hospitalized at Company expense. If the sickness or injury necessitates treatment or convalescence in the United States, such Flight Engineer shall be returned by the Company to the United States. This provision shall apply to recurrences of the same sickness or injury so long as the Flight Engineer shall remain an employee of the Company.
- (Q) A Flight Engineer shall not be required to accept a position which involves checking the performance of or training of other Flight Engineers.
- (R) Special assignments with companies other than TWA or its subsidiaries shall be made only where mutually acceptable to both TWA and the Flight Engineer involved. The Company will notify the Association and upon written request, consult with the Association prior to such an assignment being made.
- (S) It is understood and agreed that all the provisions of this Agreement, including the attachments thereto, and of the Memorandum of Agreement dated June 21, 1962, shall be binding upon the successors and assignees of the Company. In the event of a sale, transfer, lease, consolidation or merger of all or part of the operation of TWA to or with any other company, it is intended that this Agreement, including the attachments thereto, and the Memorandum of Agreement, dated June 21, 1962, will be assumed by the Company which takes over or continues TWA's operation or any part thereof insofar as it affects the Flight Engineers employed by TWA at the time of such sale, transfer, lease, consolidation or merger. In the event that a sale, transfer, lease, consolidation, merger or acquisition will affect the seniority or priority of employees occupying the Flight Engineer position (without regard to any other name or description by

which the Flight Engineer's function may be designated) on TWA and any other airline at the time of such sale, transfer, lease, consolidation or merger, representatives of the Association and TWA shall meet with the representatives of such employees without delay and negotiate reasonable and proper provisions for the protection of their seniority and priority rights, with the right of appeal, provided such other representatives so agree to arbitration by a neutral selected in the manner provided in Section XX, if any dispute arises as to what is reasonable and proper in the premises.

- (T) No Flight Engineer covered hereunder shall be placed on special assignment for a period of more than sixty (60) days unless he consents to a longer period, except where a limitation of time or otherwise is specifically stated herein.
- (U) Selection of Flight Engineers hereunder in a domicile for qualification on new equipment shall be made by advance preference bidding for such training, from those who have completed their probationary period. If insufficient preferences from such Flight Engineers are received, qualification shall be in order of inverse seniority at the domicile starting with those who have completed their probationary period.
- (V) All Flight Engineers included on the seniority list covered by this Agreement, shall be accorded and allowed a reasonable length of time to acquire and obtain at Company expense and on Company time, any additional qualifications and/or licenses which may be required by government regulation for the performance of the flight engineering function.
- (W) In the event that additional Company requirements for Flight Engineers are imposed, Flight Engineers in the employ of the Company shall be granted a reasonable period of time in which to meet such additional requirements on Company time and at Company expense. This provision shall not be applied in a manner contrary to the terms of the Memorandum of Agreement dated June 21, 1962.
- (X) At such time as an equipment interchange operation between TWA and another carrier becomes imminent, the Company will, upon request, meet with the Association in an attempt to work out any special supplemental agreement that may be necessary.

SECTION XXIII (A) AND (B), PAGE SEVENTY-SEVEN OF THE TWA-FEIA
COLLECTIVE BARGAINING AGREEMENT, DATED NOVEMBER 21, 1962 (EX-
CERPT FROM JOINT EXHIBIT 2, PRE-TRIAL
ORDER)

(Y) The Company shall provide indemnification in the amount of \$50,000 in case of death or dismemberment or total and permanent disability of a Flight Engineer resulting from an accident while actually participating in in-flight training on other than Company aircraft in connection with the training set forth in 1 (c) of the Memorandum of Agreement dated June 21, 1962, when such training is conducted at Company expense. Dismemberment shall be the loss of any of the principal members, i.e. eyes, arms or legs. Indemnity for loss of any one member shall be one-half the principal sum and loss of any two or any combination shall be for the full sum. Total and permanent disability shall be payable twelve (12) months following such accident if such total and permanent disability shall remain. In such event payment shall be made at the rate of 1% per month for duration of disability or until principal sum is paid in full.

(Z) For purposes of compensation (including deadhead and training pay), vacation accrual and pay, and sick leave continuance, a pilot who is assigned duties as a Flight Engineer in accordance with the Memorandum of Agreement dated June 21, 1962, shall be given credit for his period of service with the Company as a pilot.

SECTION XXIII

THE JUNE 21, 1962 MEMORANDUM OF AGREEMENT

(A) "Memorandum of Agreement dated June 21, 1962" as used in this Basic Agreement has reference to that document entitled Memorandum of Agreement, including Memoranda A, B, C, and D of such agreement, signed by counsel for the Company and the Association, TWA Chapter on June 21, 1962 and initialed for the government by Messrs. Francis J. O'Neill, Jr., W. Willard Wirtz, Arthur J. Goldberg, and Nathan P. Feinsinger.

(B) The parties to this Basic Agreement understand and agree that in the event of any conflict or difference which may now exist or arise in the application or interpretation of the terms of this Basic Agreement signed November 21, 1962, or any other agreements between the parties hereto, and the Memorandum of Agreement as defined in (A) above, such Memorandum of Agreement shall in all ways control.

SECTION XXIV

DURATION OF AGREEMENT

Except as provided in Section XXIII herein, this Agreement shall supersede and take precedence over all agreements, supplemental agreements, amendments, letters of understanding, arbitration awards, and similar documents executed between the Company and the Association (including its predecessor, the Air Line Flight Engineers' Association #23357 of Washington, D. C.) prior to the signing of this Agreement.

Except as provided hereafter, this Agreement shall become effective on the date of signing and shall continue in full force and effect until January 1, 1964, and shall renew itself without change until each succeeding January 1 thereafter unless written notice of intended change is served in accordance with Section 6, Title I, of the Railway Labor Act, as amended, by either party hereto at least sixty (60) days prior to January 1st of 1964 or any January 1st subsequent thereto.

For the period January 1, 1961, to January 1, 1962, a lump sum payment (less tax deductions) equal to five percent (5%) of his gross earnings as a TWA Flight Engineer for such period shall be paid each TWA Flight Engineer employed during such period; and for the period January 1, 1962, to November 1, 1962, a lump sum payment (less tax deductions) equal to ten percent (10%) of his gross earnings as a TWA Flight Engineer for such period shall be paid each TWA Flight Engineer employed during such period. Those wage rates as listed in Section III of this Agreement shall become effective as set forth therein.

Section III (D)(1), shall become effective November 1, 1962.

Section IV, Training Pay, shall become effective November 1, 1962.

Section V, Deadhead Time, except so much thereof as relates to pay and credit for pre-scheduled deadheading shall be effective November 1, 1962.

Section VI, Flight Scheduling, except (A)(3); (B)(4)(e) and (f); and (D) thereof shall become effective November 1, 1962.

Section X, Vacations, shall become effective January 1, 1963, except for (D) thereof provided that (D)(1) shall be effective in accordance herewith only to the extent practicable.

PARAGRAPHS 1 (f), 6 (a) and (b), and 8 OF THE MEMORANDUM OF AGREEMENT DATED JUNE 21, 1962, PAGES NINETY-THREE AND NINETY-FIVE OF THE TWA-FEIA COLLECTIVE BARGAINING AGREEMENT DATED NOVEMBER 21, 1962 (EXCERPT FROM JOINT EXHIBIT 2, PRE-TRIAL ORDER)

MEMORANDUM

OF

AGREEMENT

DATED

JUNE 21, 1962

AND

Related Documents

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June 21, 1962

MEMORANDUM OF AGREEMENT

Trans World Airlines and Flight Engineers International Association TWA Chapter agree that the "crew complement" issues are resolved as follows:

1. All Flight Engineers on the Flight Engineer Seniority List of 1/1/62 and all furloughed Flight Engineers on the Flight Engineer Furlough List of 4/19/61 who possess recall rights and who exercise their recall rights (see listing in Memoranda A and A1) will be recognized as having full priority rights to the Flight Engineer position on all aircraft operated by the Company including three-man jet crews, on the following basis:
 - (a) These Flight Engineer positions shall be bid for by such Flight Engineers on a seniority basis.
 - (b) The Flight Engineers whose names appear on Memorandum A shall be given training for the Flight Engineer position on three-man jet crews at Company expense and on Company time.
 - (c) They shall be placed in the three-man jet crew Flight Engineer position when they have satisfied the qualifications provided for in the Feinsinger Commission Report plus two hours of flight training on jet aircraft, to include instructions in three landings of the aircraft.
 - (d) Flight Engineers who already have some pilot qualifications may be advanced to the three-man crew training and to Flight Engineer positions on these crews as provided in attached Memorandum B.
 - (e) No other persons shall be placed in Flight Engineer positions until all presently employed Flight Engineers and those on furlough who exercise their recall rights (Memoranda A and A1) have been given full opportunity to take the training referred to herein (in Paragraph 1(c)) and to bid on the Flight Engineer positions as they are qualified.
 - (f) The Flight Engineers listed in Memoranda A and A1 shall be recognized as entitled at all future times and until retirement or discharge for cause to priority rights to all Flight Engineer positions required by the Company's operations, as detailed and implemented in attached Memorandum C.
2. Any Flight Engineer listed in Memorandum A who chooses not to take the instruction provided for in Paragraph 1 (c) and any Flight Engineer listed in

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PARAGRAPHS 1 (f), 6 (a) and (b), and 8 OF THE MEMORANDUM OF AGREEMENT DATED JUNE 21, 1962, PAGES NINETY-THREE AND NINETY-FIVE OF THE TWA-FEIA COLLECTIVE BARGAINING AGREEMENT DATED NOVEMBER 21, 1962 (EXCERPT FROM JOINT EXHIBIT 2, PRE-TRIAL ORDER)

Memoranda A and A1 who undertakes but is unable to obtain a Commercial Certificate and Instrument Rating shall be entitled to severance pay (to be negotiated or resolved as an economic issue as hereinafter provided), at such time as his seniority does not entitle him to retain any Flight Engineer position. Any Flight Engineer listed on Memorandum A may elect at any time to resign and thereupon become eligible for such severance pay. Any Flight Engineer listed on Memoranda A and A1 who has a medical waiver shall not be disqualified from serving as a Flight Engineer on a three-man jet crew by reason of any physical condition covered by such waiver.

3. Inasmuch as there are presently only approximately 67 Flight Engineers on furlough and no pilots presently on furlough, and inasmuch as the parties agree that those on this list who will accept recall will probably approximate the numbers necessary to be recalled to meet contemplated changes in the working conditions in the agreement now being negotiated, it is agreed that all such furloughed Flight Engineers shall be offered recall prior to the placing of any other person in any Flight Engineer position and will be recalled except for those Engineers who fail to accept recall in accordance with the basic agreement. A Flight Engineer listed on Memorandum A1 who accepts recall will have all rights of active Flight Engineer status except that he shall not be eligible for severance pay should he elect not to take the training necessary to qualify him for service in the Flight Engineer position on a three-man jet crew or should he become subject to subsequent furlough before becoming eligible by seniority for such training. He shall be offered the opportunity to obtain a Commercial Certificate on his own time but at Company expense. Instrument Rating Training and training for other additional qualifications provided for herein shall be offered at Company expense and on Company time.

4. Flight Engineers shall be given training for the three-man jet crew Flight Engineer positions on such basis and at such times and through such procedures as the Company may reasonably prescribe, consistent with Memorandum B. The training of all Flight Engineers on Memoranda A and A1 for the Commercial Certificate and Instrument Rating shall take place at an FAA approved school in the vicinity of the Flight Engineer's domicile.

5. The Company is aware of the provisions as set forth in Memorandum D having to do with the protection of Flight Engineer representational rights.

6. All future Flight Engineer vacancies shall be filled as follows:

- (a) First, by the exercise by Flight Engineers (listed in Memoranda A and A1) in accordance with their rights under applicable agreements and memoranda.
- (b) Second, and only if (a) has been satisfied, by persons selected by the Company in accordance with applicable regulations, with no A and P requirement, and in accordance with Paragraph 7, below, and with Memorandum B.

7. The Company agrees not to furnish training for Flight Engineer certificates to employees other than Flight Engineers. However, the Company may furnish training to employees other than Flight Engineers to cover Flight Engineer vacancies which, at the time such training commences are specifically foreseeable and made known in writing to the Association, if the training of such employees is necessary to fill such vacancies, consistent with the provisions of Memorandum B and with the assurance that such training will not jeopardize the Flight Engineers' position and bidding rights of the Flight Engineers listed in Memoranda A and A1.

8. Duration. This Memorandum of Agreement and accompanying attachments shall remain in effect during the term of the basic working agreement and succeeding agreements and shall continue in effect without change unless, at such times as the basic working agreement and succeeding agreements are open for revision by reason of notice having been served in accordance with Section 6 of the Railway Labor Act, a majority of the Flight Engineers listed in Memoranda A and A1 shall voluntarily decide to reopen this agreement and attachments, independently of the reopening of the basic working agreement, for modification or repeal.

Economic Issues. The parties will negotiate for a period of one week in an effort to settle the remaining issues, with the assistance of Dr. Nathan P. Feinsinger, specially designated by the Government for this purpose. Any issue

MEMORANDUM C, PAGE ONE HUNDRED FIVE OF THE TWA-FEIA COLLECTIVE
BARGAINING AGREEMENT DATED NOVEMBER 21, 1962 (EXCERPT FROM JOINT
EXHIBIT 2, PRE-TRIAL ORDER)

10. When a Flight Engineer is taking the instrument portion of this training he shall be off schedule and so assigned for this training on a full-time basis.
11. Any Flight Engineer who is unable to move up from pistons to jets due to not having the required additional qualifications shall be paid at the rate of pay he could earn if he did have the additional qualifications. This pay shall continue until he is able to meet these qualifications and move up to the jets or until there are no Flight Engineers junior to him on the jets.
12. At such time as there is a need for additional Flight Engineers over and above the number of active Flight Engineers and recalled furloughed Flight Engineers, such need shall be filled by pilots in the Company's employ or new hires who need not possess an A & P certificate.
13. The representation arrangements suggested in the Feinsinger Commission Report (printed version, page 14 dated October 17, 1961) are accepted by the parties, with these additional clarifications:
 - (a) A pilot who is in the Company's employ when he is moved over to a flight engineer position including the third seat on three-man turbojet crews and who is a member of ALPA will not be considered covered by the FEIA-TWA agency shop agreement. He will be entitled to be represented by an ALPA representative in a system board proceeding involving any grievance filed by him; but an FEIA representative may also be present at any such proceeding. He will also retain his right to process a grievance involving discipline or discharge through the grievance procedures and System Board proceedings of the Pilots' Agreement; provided that an FEIA representative may also be present at any such proceeding.
 - (b) Any occupant of a flight engineer position other than one coming within the description in subparagraph (a) above will be considered covered by the FEIA-TWA agency shop agreement.

MEMORANDUM C

So long as the Company, its successors or assigns, includes or is required by law or federal regulation to include as a member of its cockpit flight crews in excess of two airmen and one airman is assigned to perform the flight engineering functions, the Company, its successors and assigns, agrees that it will offer to all flight engineers named on Memoranda A and A1 the prior right as against flight crew members other than flight engineers to bid and occupy all flight engineer positions required by the Company's operations and those of its successors and assigns until their retirement, voluntary resignation or discharge for cause. There shall be included among the said engineers so entitled to priority those engineers furloughed after the execution of this agreement because of no available flight engineer vacancy to which their seniority entitles them to bid and who are subsequently recalled.

This agreement of the Company is to be made with each individual directly and is to be legally enforceable by him against the Company, and its successors and assigns, and it shall be in such form as shall survive the duration of the basic working agreement and succeeding agreements and is intended to continue in effect unless at any time a majority of such flight engineers shall voluntarily decide to reopen this agreement for modification or repeal.

LETTER DATED JUNE 21, 1962 TO H. S. DIETRICH FROM D. J. CROMBIE,
PAGE ONE HUNDRED TWENTY ONE OF THE TWA-TEIA COLLECTIVE BARGAINING
AGREEMENT DATED NOVEMBER 21, 1962 (EXCERPT FROM JOINT EXHIBIT 2,
PRE-TRIAL ORDER

IN WITNESS WHEREOF, the parties hereto have signed
this Letter of Agreement this 21st day of November, 1962

June 21, 1962

For TRANS WORLD AIRLINES, INC.

/s/ David J. Crombie

WITNESS:

/s/ David S. Spain
/s/ Kenneth L. Meinen
/s/ Charles A. Pasciuto

For THE FLIGHT ENGINEERS'
INTERNATIONAL ASSOCIATION
AFL-CIO, TWA CHAPTER

/s/ H. S. Dietrich

WITNESS:

/s/ Gordon K. Clare
/s/ Asher W. Schwartz
/s/ Ronald A. Brown

H. S. Dietrich
President, TWA Chapter
Flight Engineers' International
Association, AFL-CIO
1 West Linwood Boulevard
Kansas City, Missouri

Dear Mr. Dietrich:

Regarding Paragraph 1 (c) of the Memorandum of Agree-
ment of June 21, 1962, this will record the Company's
assurance that the requirement of additional pilot train-
ing beyond that required for a Commercial Certificate
and Instrument Rating will not result in the disqualifi-
cation of any Flight Engineer from service in the three-
man jet crew flight engineer position.

Very truly yours,

/s/ D. J. Crombie

D. J. Crombie
Vice President
Industrial Relations

THE
ASSOCIATION

THIS LETTER
into in accordance
Railway Labor
WORLD AIRLINES
"Company",
TRANS WORLD
the FLIGHT
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known as the

Other provisions
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(A) By assigning
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purpose

Page One Hundred

Page One Hundred Twenty

Page One Hundred Twenty-One

LETTER DATED NOVEMBER 21, 1962 to H.S. DIETRICH FROM D. J. CROMBIE, PAGE ONE HUNDRED TWENTY-TWO OF THE TWA-FEIA COLLECTIVE BARGAINING AGREEMENT DATED NOVEMBER 21, 1962 (EXCERPT FROM JOINT EXHIBIT 2, PRE-TRIAL ORDER)

November 21, 1962

Mr. H. S. Dietrich
President, TWA Chapter
Flight Engineers' International
Association
19 West Linwood Boulevard
Kansas City 11, Missouri

Dear Mr. Dietrich:

This will confirm our understanding that in keeping with my letter to you dated June 21, 1962, on the subject of certain pilot training for Flight Engineers, a Flight Engineer shall not be disciplined or disqualified in the event he is unable to perform those duties as set forth in Section II (B) of the TWA-FEIA Working Agreement signed November 21, 1962.

Sincerely,

/s/ D. J. Crombie

D. J. Crombie
Vice President
Industrial Relations

Page One Hundred Twenty-Two

November 21, 1962

Mr. H. S. Dietrich
President, TWA Chapter
Flight Engineers' International
Association
19 West Linwood Boulevard
Kansas City 11, Missouri

Dear Mr. Dietrich:

This will confirm my assurances to you that it is intended that any changes or amendments made to the TWA-FEIA Working Agreement signed November 21, 1962, or the attachments thereto, or any action taken thereunder or the Supplemental Memorandum Between the Company and the Air Line Pilots' Association, International, dated September 25, 1962, shall not increase the risk of loss of representation rights of the Flight Engineers' International Association, TWA Chapter.

Sincerely,

/s/ D. J. Crombie

D. J. Crombie
Vice President
Industrial Relations

Page One Hundred Twenty-Three

REPORT OF THE PRESIDENTIAL COMMISSION, DATED MAY 24, 1961,
PAGE 20, FIRST TWO FULL PARAGRAPHS
PAGE 26, FIRST FULL PARAGRAPH
PAGE 35, SECOND FULL PARAGRAPH
(EXCERPT FROM JOINT EXHIBIT 5, PRE-TRIAL ORDER)

is fully qualified to fly and land the airplane under routine and emergency conditions.

The dispute arises over the qualifications of the third crew member. The FAA regulations require that he have a flight engineer's certificate. FEIA insists that, in addition, he is and should remain a mechanical "specialist" with an A & P license and that no additional duties or qualifications of a piloting nature should be required. ALPA argues against the mechanical specialist concept and contends that the third crew member should have pilot qualifications so that he may relieve the co-pilot if necessary.

Each union supports its case with safety arguments, and each is distrustful of the other's motives. FEIA argues that ALPA in demanding pilot qualifications for the third man is trying to capture flight engineers' jobs for ALPA members; and ALPA contends that FEIA in insisting on the A & P license and opposing pilot qualifications is trying to preserve without justification a separate craft and a separate union in the cockpit.

FEIA's Position

FEIA conceives of the flight engineer as a mechanical specialist who is essential to the safe and efficient operation of turbine powered as well as piston powered aircraft. It stated to the Commission:

REPORT OF THE PRESIDENTIAL COMMISSION, DATED MAY 24, 1961,
PAGE 20, FIRST TWO FULL PARAGRAPHS
PAGE 26, FIRST FULL PARAGRAPH
PAGE 35, SECOND FULL PARAGRAPH
(EXCERPT FROM JOINT EXHIBIT 5, PRE-TRIAL ORDER)

and demanding flight tests, all jet aircraft in service today received type certificates establishing, among other things, that the minimum flight crew necessary for safe operation consists of two pilots and a flight engineer.

The Civil Air Regulations have never specified that flight engineers must have either pilot qualifications or an A & P license. But neither do the regulations say that a flight engineer may not have additional pilot or mechanic qualifications.

C. The Eastern Air Lines Emergency Board

The disagreement between ALPA and FEIA erupted on Eastern Air Lines during contract negotiations in 1957. Each union became involved in a dispute with the carrier over the crew complement on turboprop and turbojet equipment about to be placed in service on Eastern. In January 1958, Emergency Boards No. 120 and No. 121 were appointed pursuant to Section 10 of the Railway Labor Act to investigate the disputes. Because of the interrelationship of the issues, the same three men were appointed in each case.

In making its reports in July 1958, the Eastern Board defined the crew complement issue before it as follows:

Sharply in issue . . . is the question whether in the turbojet and turboprop aircraft about to be placed into service by Eastern, the third crew member should be qualified solely as an engineer with a mechanical background or whether he should possess, in addition, training in skills and techniques of pilots so as to be able to assist in the performance of certain additional duties.

REPORT OF THE PRESIDENTIAL COMMISSION, DATED MAY 24, 1961,
PAGE 20, FIRST TWO FULL PARAGRAPHS
PAGE 26, FIRST FULL PARAGRAPH
PAGE 35, SECOND FULL PARAGRAPH
(EXCERPT FROM JOINT EXHIBIT 5, PRE-TRIAL ORDER)

OBSERVATIONS OF THE COMMISSION

This controversy is not just another labor dispute that has caught the public's attention. Rather, it is the culmination of a series of episodes that reflect critical strain and difficulty in an important section of the aviation industry.

The gravity of the situation was emphasized when, on May 11, 1961, the Secretary of Labor, the Aviation Adviser to the President, the Chairman of the National Mediation Board, and the Chairman of this Commission separately addressed the carriers and the representatives of the two unions concerning this controversy. A common theme ran through their remarks: that the Nation cannot afford to let the present conflict in this industry continue; that public confidence in the efficacy of collective bargaining to settle major disputes has been shaken; that not only the labor and management policies of this industry, but also the very principle of voluntarism in all industrial relations are on trial; and that the failure of the parties to negotiate, with the aid of the Commission, a just and lasting settlement of their present dispute may well lead to a solution imposed by Government. It was made clear that resort to such a solution would constitute a major defeat for the institution of free collective bargaining in this country.

FLIGHT ENGINEER INDIVIDUAL AGREEMENT (JOINT EXHIBIT 7, PRE-
TRIAL ORDER)

This Agreement made this 10th day of April, 1963, by and between TRANS WORLD AIRLINES, INC. and its successors and assigns (hereinafter referred to as the "Company") and CHARLES W. BEATY (hereinafter referred to as the "Flight Engineer").

W I T N E S S E T H :

WHEREAS, the Company and the Flight Engineers' International Association, AFL-CIO, TWA Chapter (hereinafter referred to as the "Association"), are parties to an Agreement dated June 21, 1962, entered into by the Association as the duly certified representative of all the flight engineers listed in Memoranda A and Al of said Agreement, including Flight Engineer, and on their behalf and at the instance and request of the Company, the Association, and of the U. S. Government, in order to accomplish a practical and reasonable transition from a four-man jet crew operation to a three-man jet crew operation with full protection to the prior rights of the aforesaid flight engineers to bid for and occupy the flight engineer position; and

WHEREAS, that Agreement, in part, requires that the Company make an individual agreement with each of the flight engineers referred to in Memoranda A and Al, including Flight Engineer, agreeing to offer him the prior right as against flight crew members other than flight engineers to bid for and occupy any flight engineer position required by the Company's operations and those of its successors and assigns, until his retirement, voluntary resignation or discharge for cause, said individual agreement to be in such form as shall survive the duration of the basic working agreement and succeeding agreements between the Company and the Association, its successors and assigns; and

WHEREAS, the aforesaid Agreement dated June 21, 1962 became effective upon approval of the Executive Council of the Association and ratification by vote of the flight engineers referred to in Memoranda A and Al, including Flight Engineer, on July 31, 1962;

NOW THEREFORE, in consideration of the mutual provisions hereinafter set forth and of the mutual promises set forth by and on behalf of the Company and Flight Engineer in the aforesaid Agreement of June 21, 1962, and in consideration of past services rendered, it is agreed:

1. So long as the Company includes, or is required by law or federal regulation to include as members of any of its cockpit flight crews more than two airmen, and one or more of such airmen is assigned to perform the flight engineering function (without regard to any other name or description by which the flight engineering function may be designated), the Company agrees that it will offer to Flight Engineer the prior right as against flight crew members other than flight engineers to bid for and occupy any flight engineer position required by the Company's operations and those of its successor or assigns.

FLIGHT ENGINEER INDIVIDUAL AGREEMENT (JOINT EXHIBIT 7, PRE-
TRIAL ORDER)

2. This Agreement shall survive the expiration of the current and any future collective bargaining agreement between the Company and the Association, or their successors or assigns, or any other duly designated or recognized representative of its employees who perform the flight engineering function, and shall continue in full force and effect until Flight Engineer's retirement, voluntary resignation or discharge for cause, and shall survive the re-employment on recall under the basic working agreement should Flight Engineer be furloughed because of no available flight engineer vacancy to which his seniority entitles him to bid.
3. This Agreement shall remain in effect as provided in paragraph 2. unless, at such time as the basic working agreement and succeeding agreements are open for revision by reason of notice having been served in accordance with Section 6 of the Railway Labor Act, a majority of the flight engineers listed in Memoranda A and A1 then surviving and who have not retired, resigned or been discharged for cause shall voluntarily decide to reopen this Agreement for modification or repeal by ballot conducted by and under the rules of the American Arbitration Association.
4. The Company shall not enter into any agreement which modifies, varies from, or is inconsistent with any of the terms and provisions of this Agreement or of the aforesaid Agreement of June 21, 1962.
5. In the event that the Company threatens to sign any agreement or to take any action which denies or will, immediately or in the future, directly result in the denial of Flight Engineer's prior right to bid for and occupy the flight engineer's position, as provided herein and in the aforesaid Agreement of June 21, 1962, or which modifies, varies from or is inconsistent therewith, or if the Company has signed such an agreement or has taken such action, Flight Engineer shall have the right to assert his objection to the Company by notice in writing by registered mail or by telegram. The Company shall reply to said objection within four (4) calendar days by registered mail or telegram. If Flight Engineer deems said reply to be unsatisfactory, he may, within four (4) calendar days, submit his said objection to Nathan Feinsinger or if he is unable to serve, to James C. Hill, as arbitrator. The said arbitrator shall immediately communicate with the Company and Flight Engineer for the purpose of inquiring as to the nature and merit of Flight Engineer's objection. If, following such inquiry, the arbitrator believes that in order to preserve Flight Engineer's right as herein defined it is necessary to direct the Company to refrain from taking the action objected to pending a full hearing on Flight Engineer's objection, he shall have the authority to do so. The arbitrator shall in any event schedule a hearing on Flight Engineer's objection within four (4) calendar days following receipt thereof, and shall render his decision thereon not later than four (4) calendar days thereafter.

FLIGHT ENGINEER INDIVIDUAL AGREEMENT (JOINT EXHIBIT 7, PRE-
TRIAL ORDER)

6. If it is determined by the arbitrator that the Company has signed or threatens to sign any agreement, or has taken any action or threatens to do so, which denies or will, immediately or in the future, directly result in a denial of Flight Engineer's prior right to bid for and occupy the flight engineer position, as provided herein and in the aforesaid Agreement of June 21, 1962, the arbitrator shall direct such action by the Company as is necessary to assure full and continuous protection of Flight Engineer's prior right to bid for and occupy such position including, in addition to such protection, full compensation, where appropriate, for any actual loss of earnings that has directly resulted or will in the future have directly resulted from the Company's denial of such right.
7. Should the position of permanent arbitrator become vacant for any reason, a successor shall be selected by the Company and Flight Engineer but, if they fail to agree upon a successor within fourteen (14) days after such position becomes vacant, he shall be selected from a list furnished by the American Arbitration Association, in accordance with its then controlling rules and regulations governing such selection.
8. This Agreement shall be deemed to have been executed and delivered in the state of New York and shall be construed and enforced according to the laws of the State of New York, and all provisions thereof shall be administered according to the laws of such state.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals the day and year first above written.

TRANS WORLD AIRLINES, INC.

BY: _____

Charles W. Burt
Flight Engineer

STATE OF NEW YORK, COUNTY OF New York

On the 25th day of February, 1966, before me personally came D. J. Crombie to me known, who, being by me duly sworn, did depose and say that he resides at 31 Curley Road, Stamford, Conn.; that he is the Vice President of Trans World Airlines, Inc., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

Rose M. Bluski

FLIGHT ENGINEER INDIVIDUAL AGREEMENT (JOINT EXHIBIT 7, PRE-
TRIAL ORDER)

STATE OF MISSOURI, COUNTY OF JACKSON
On the 10th day of April, 1963 before me personally
came CHARLES W. BEATY, to me known to be the
individual described in and who executed the foregoing instrument, and
acknowledged that he executed the same.

Clair M. Thies
My Commission Expires June 22, 1964

The Flight Engineers' International Association, AFL-CIO
TWA Chapter, being a party to the Agreement dated June 21,
1962, hereby consents to and approves this Agreement, which
shall not be subject to change by the Association, its
successors and assigns, except in the manner provided in
paragraph 3. thereof.

FLIGHT ENGINEERS' INTERNATIONAL
ASSOCIATION, AFL-CIO, TWA CHAPTER

By: Harrison S. Dietrich

STATE OF MISSOURI, COUNTY OF JACKSON
On the 10th day of April, 1963, before me personally
came HARRISON S. DIETRICH, to me known, who, being by
me duly sworn, did depose and say that he resides at 6729 Broadmoor, Shawnee Mission,
that he is the President of the Flight Engineers' International Kansas
Association, AFL-CIO, TWA Chapter, the association described in and which
executed the foregoing instrument; and that he signed his name thereto by
order of the Executive Council of said Association.

Clair M. Thies
My Commission Expires June 22, 1964

FLIGHT ENGINEER INDIVIDUAL AGREEMENT (JOINT EXHIBIT 7, PRE-TRIAL ORDER)

This Agreement made this _____ day of _____, 1963, by and between TRANS WORLD AIRLINES, INC. and its successors and assigns (hereinafter referred to as the "Company") and _____ (hereinafter referred to as the "Flight Engineer").

W I T N E S S E T H :

WHEREAS, the Company and the Flight Engineers' International Association, AFL-CIO, TWA Chapter (hereinafter referred to as the "Association"), are parties to an Agreement dated June 21, 1962, entered into by the Association as the duly certified representative of all the flight engineers listed in Memoranda A and A1 of said Agreement, including Flight Engineer, and on their behalf and at the instance and request of the Company, the Association, and of the U. S. Government, in order to accomplish a practical and reasonable transition from a four-man jet crew operation to a three-man jet crew operation with full protection to the prior rights of the aforesaid flight engineers to bid for and occupy the flight engineer position; and

WHEREAS, that Agreement, in part, requires that the Company make an individual agreement with each of the flight engineers referred to in Memoranda A and A1, including Flight Engineer, agreeing to offer him the prior right as against flight crew members other than flight engineers to bid for and occupy any flight engineer position required by the Company's operations and those of the successors and assigns, until his retirement, voluntary resignation or discharge for cause, said individual agreement to be in such form as shall survive the duration of the basic working agreement and succeeding agreements between the Company and the Association, its successors and assigns; and

WHEREAS, the aforesaid Agreement dated June 21, 1962 became effective upon approval of the Executive Council of the Association and ratification by vote of the flight engineers referred to in Memoranda A and A1, including Flight Engineer, on July 31, 1962;

NOW THEREFORE, in consideration of the mutual provisions hereinafter set forth and of the mutual promises set forth by and on behalf of the Company and Flight Engineer in the aforesaid Agreement of June 21, 1962, and in consideration of past services rendered, it is agreed:

1. So long as the Company includes, or is required by law or federal regulation to include as members of any of its cockpit flight crews more than two airmen, and one or more of such airmen is assigned to perform the flight engineering function (without regard to any other name or description by which the flight engineering function may be designated), the Company agrees that it will offer to Flight Engineer the prior right as against flight crew members other than flight engineers to bid for and occupy any flight engineer position required by the Company's operations and those of its successor or assigns.

FLIGHT ENGINEER INDIVIDUAL AGREEMENT (JOINT EXHIBIT 7, PRE-
TRIAL ORDER)

2. This Agreement shall survive the expiration of the current and any future collective bargaining agreement between the Company and the Association, or their successors or assigns, or any other duly designated or recognized representative of its employees who perform the flight engineering function, and shall continue in full force and effect until Flight Engineer's retirement, voluntary resignation or discharge for cause, and shall survive the re-employment on recall under the basic working agreement should Flight Engineer be furloughed because of no available flight engineer vacancy to which his seniority entitles him to bid.
3. This Agreement shall remain in effect as provided in paragraph 2. unless, at such time as the basic working agreement and succeeding agreements are open for revision by reason of notice having been served in accordance with Section 6 of the Railway Labor Act, a majority of the flight engineers listed in Memoranda A and A1 then surviving and who have not retired, resigned or been discharged for cause shall voluntarily decide to reopen this Agreement for modification or repeal by ballot conducted by and under the rules of the American Arbitration Association.
4. The Company shall not enter into any agreement which modifies, varies from, or is inconsistent with any of the terms and provisions of this Agreement or of the aforesaid Agreement of June 21, 1962.
5. In the event that the Company threatens to sign any agreement or to take any action which denies or will, immediately or in the future, directly result in the denial of Flight Engineer's prior right to bid for and occupy the flight engineer's position, as provided herein and in the aforesaid Agreement of June 21, 1962, or which modifies, varies from or is inconsistent therewith, or if the Company has signed such an agreement or has taken such action, Flight Engineer shall have the right to assert his objection to the Company by notice in writing by registered mail or by telegram. The Company shall reply to said objection within four (4) calendar days by registered mail or telegram. If Flight Engineer deems said reply to be unsatisfactory, he may, within four (4) calendar days, submit his said objection to Nathan Feinsinger or if he is unable to serve, to James C. Hill, as arbitrator. The said arbitrator shall immediately communicate with the Company and Flight Engineer for the purpose of inquiring as to the nature and merit of Flight Engineer's objection. If, following such inquiry, the arbitrator believes that in order to preserve Flight Engineer's right as herein defined it is necessary to direct the Company to refrain from taking the action objected to pending a full hearing on Flight Engineer's objection, he shall have the authority to do so. The arbitrator shall in any event schedule a hearing on Flight Engineer's objection within four (4) calendar days following receipt thereof, and shall render his decision thereon not later than four (4) calendar days thereafter.

FLIGHT ENGINEER INDIVIDUAL AGREEMENT (JOINT EXHIBIT 7, PRE-
TRIAL ORDER)

6. If it is determined by the arbitrator that the Company has signed or threatens to sign any agreement, or has taken any action or threatens to do so, which denies or will, immediately or in the future, directly result in a denial of Flight Engineer's prior right to bid for and occupy the flight engineer position, as provided herein and in the aforesaid Agreement of June 21, 1962, the arbitrator shall direct such action by the Company as is necessary to assure full and continuous protection of Flight Engineer's prior right to bid for and occupy such position including, in addition to such protection, full compensation, where appropriate, for any actual loss of earnings that has directly resulted or will in the future have directly resulted from the Company's denial of such right.
7. Should the position of permanent arbitrator become vacant for any reason, a successor shall be selected by the Company and Flight Engineer but, if they fail to agree upon a successor within fourteen (14) days after such position becomes vacant, he shall be selected from a list furnished by the American Arbitration Association, in accordance with its then controlling rules and regulations governing such selection.
8. This Agreement shall be deemed to have been executed and delivered in the state of New York and shall be construed and enforced according to the laws of the State of New York, and all provisions thereof shall be administered according to the laws of such state.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals the day and year first above written.

TRANS WORLD AIRLINES, INC.

BY: _____

Flight Engineer

[Notarization]

TWA-ALPA SUPPLEMENTAL MEMORANDUM DATED SEPTEMBER 25, 1962, PARAGRAPH M ON PAGE ONE HUNDRED FORTY-FIVE AND PARAGRAPHS B C AND D ON PAGE ONE HUNDRED THIRTY-SEVEN et seq. (EXCERPT FROM JOINT EXHIBIT 8, PRE-TRIAL ORDER)

- c. The monthly pay protection rate as determined for him in accordance with 3 b. above.
8. The pay protection rates described herein shall not apply when a pilot does not utilize his seniority in his status to hold a bid run.
9. Notwithstanding Section 19 of the TWA-ALPA Working Agreement, in the event of a displacement of a Second Officer or Regular Reserve Second Officer, a more senior pilot in the same status at the domicile where such displacement is being effected, may elect to displace in lieu of such Second Officer or Regular Reserve Second Officer, provided that a pilot making such an election may only displace the least senior pilot in any status at his domicile to whom he is senior. Such election shall be by telegram bid only.
10. A pilot shall not be entitled to any form of pay protection under this Supplemental Memorandum during any full month in which he is on any type leave of absence. A pilot who is on leave of absence for part of a month who qualifies for monthly pay protection, shall be entitled to a prorated portion of his monthly pay protection rate as well as his hourly pay protection rate. A pilot who is on sick pay continuance who qualifies for monthly pay protection, shall be entitled to his monthly pay protection, prorated, as well as his hourly pay protection rate.
11. The above provisions as they affect pilots due primary pay protection under 1 above shall be effective on the first day of the month in which three-man turbo-jet crews are implemented in scheduled operations at such pilots' domicile. The above provisions, as they affect pilots due secondary pay protection under 2 above, shall be effective on the first day of the month in which such a pilot is affected at his domicile by the bidding, displacement or assignment of any pilot due primary pay protection.
- L. With reference to Section 11 (C)(3)(e) of the TWA-ALPA Working Agreement signed May 6, 1962, the following will apply:
 1. Section 11 (C)(3)(a) through (f) and Section 11 (C)(3)(h)(2) will be effective on and after the initial date of operation of a three-man turbo-jet crew, except as provided in 2 through 4 below.

Page One Hundred Forty-Four

2. Section 11 (C)(3)(b) shall be effective on and after November 6, 1963, or on the date all International turbo-jet First Officers have received equipment ratings in accordance with the Doppler navigation letter agreement dated May 6, 1962.
3. Section 11 (C)(3)(e) and (f) will be effective on and after November 6, 1963, provided that pilots may be scheduled and credited under such provisions prior to November 6, 1963.
4. Prior to November 6, 1963, those turbo-jet flights which are not scheduled under the provisions of Section 11 (C)(3)(b) through (f) of the TWA-ALPA Working Agreement signed May 6, 1962, shall be scheduled under the provisions of Section 11 (C)(3)(a) or (b) of the TWA-ALPA Working Agreement signed May 22, 1959.

M. This Supplemental Memorandum shall become effective on the date of signing and shall remain effective concurrent with the TWA-ALPA Working Agreement signed May 6, 1962, subject to Section 27 of such Working Agreement; provided that paragraph C hereof shall continue in effect during such period as any flight engineer listed on Appendix A attached hereto who is qualified in accordance with paragraph A hereof is available for assignment as a third crew member on turbo-jet aircraft; and further provided that the exception to the Memorandum of Understanding dated May 22, 1959, as set forth in paragraph A hereof and the second sentence of paragraph G hereof, shall continue in effect concurrent with paragraph C hereof; and further provided that paragraph H hereof shall not be subject to termination or change at the instance, notice or request of the Company.

IN WITNESS WHEREOF, the parties have signed this Supplemental Memorandum this 25th day of September, 1962.

For TRANS WORLD AIRLINES, INC.

/s/ D. J. Crombie

WITNESS:

/s/ Kenneth L. Meinen

/s/ David S. Spain

/s/ Charles A. Pasciuto

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TWA-ALPA SUPPLEMENTAL MEMORANDUM DATED SEPTEMBER 25, 1962, PARAGRAPH M ON PAGE ONE HUNDRED FORTY-FIVE AND PARAGRAPHS B C AND D ON PAGE ONE HUNDRED THIRTY-SEVEN et seq. (EXCERPT FROM JOINT EXHIBIT 8, PRE-TRIAL ORDER)

crew member, where required, possesses the qualifications and training as set forth hereafter for such qualifications as may be required by applicable Federal regulations. Such third crew member shall receive training that will enable him, in the event of an emergency created by the incapacity or unavailability of one of the two pilots, to occupy one of such pilot stations and provide appropriate assistance to the pilot then in command by possessing the following qualifications:

1. A commercial pilot's certificate and instrument rating.
2. Qualifications in the type aircraft to which assigned as follows:
 - a. Ability to execute enroute, approach, and landing copilot duties in the emergency situation specified above, including checklist functions, as would be performed by the second in command at the direction of the pilot in command, other than manipulation of the primary flight controls;
 - b. Ability to manipulate the flight controls of the turbo-jet aircraft by reference to flight instruments to the following extent: straight and level flight, normal turns, climbs, and descents at the various normal operating speeds, but not including take-offs and landings;
 - c. The training for and demonstration of the ability required by paragraphs a. and b. immediately above may be accomplished in a turbo-jet simulator.
3. Ability to operate radio communications and navigation equipment and weather radar;
4. Ability to read and interpret enroute, terminal area, and approach charts;
5. Ability to copy and interpret air traffic control clearances and give position reports when required;
6. Ability to maintain appropriate flight logs; and
7. Two (2) hours of pilot flight training on the jet aircraft, to include instruction in three (3) landings of the aircraft.

When such third crew member position, where required, is filled in accordance with paragraph D below by other

Page One Hundred Thirty-Six

than a Flight Engineer listed in Appendix A attached hereto, such third crew member shall be qualified, in addition to 1 through 7 above, in accordance with the Memorandum of Understanding dated May 22, 1959, as modified herein.

- B. The routine duty assignments of third crew members qualified and trained as in paragraph A above shall utilize the qualifications listed in 1 through 7 of such paragraph so as to provide maximum safety, crew-coordination and efficiency. Such duties shall not conflict with performance of flight engineering duties, and shall not include manipulation of the primary flight controls. At the direction of the Captain, the third crew member may be required to perform the following duties:

1. Make the pre-flight inspection of the aircraft, and consult with the Captain on the mechanical condition of the aircraft; consult with the Captain and First Officer on the flight plan, fuel plan, weather, and anticipated operation of the flight.
2. Assist in pre-takeoff computations involving performance of the aircraft.
3. Read the checklist and answer for items applicable to his duty station.
4. Assist in maintaining required in-flight forms and records.
5. Assist in radio communications functions.
6. Assist in enroute re-planning and navigational functions when required.
7. Assist in traffic look-out during visual approach and departure operations.
8. Assist in monitoring of flight instruments with respect to their normal functioning during instrument approach and departure operations.
- C. Those Flight Engineers listed in Appendix A attached hereto shall have full job and bid priority rights to the third operating crew position, where required, on all aircraft operated by the Company including turbo-jet aircraft operated by three-man crews.

The exercise of this priority on turbo-jet aircraft operated by three-man crews is subject to such Flight Engineers satisfying the Company in acquiring those

Page One Hundred Thirty-Seven

TWA-ALPA SUPPLEMENTAL MEMORANDUM DATED SEPTEMBER 25, 1962, PARAGRAPH M ON PAGE ONE HUNDRED FORTY-FIVE AND PARAGRAPHS B C AND D ON PAGE ONE HUNDRED THIRTY-SEVEN et seq. (EXCERPT FROM JOINT EXHIBIT 8, PRE-TRIAL ORDER)

qualifications set forth in 1 through 7 of paragraph A above. The Company shall advise the Association in writing of the name of each such Flight Engineer who so qualifies. Each such Flight Engineer, upon completing such qualification for assignment to three-man turbo-jet crews, shall be placed on the TWA pilots' system seniority list below all pilots listed thereon on the date of signing this Supplemental Memorandum, but above any pilot hired by the Company thereafter. The relative seniority of such Flight Engineers so placed on the TWA pilots' system seniority list, as among such Flight Engineers, shall be the same as their seniority on the TWA Flight Engineers' system seniority list. The exercise of each such Flight Engineer's bid rights for pilot positions with the Company requiring qualifications in excess of those provided in 1 through 7 of paragraph A above shall be conditioned upon the completion by such Flight Engineer of the training and qualification required. Request for such training, qualification and assignment shall be at the sole discretion of each such Flight Engineer, and acceptance or rejection of such requests for such additional qualification and training shall be at the discretion of the Company, exercised in a uniform manner and consistent with the then effective Company requirements and regulations concerning pilot qualifications.

- D. All third crew member positions shall first be filled in accordance with the TWA-EEIA Working Agreement and the job and bid priority rights of those Flight Engineers listed in Appendix A attached hereto, as provided in paragraph C above. If such positions are not so filled, a pilot who holds a position on the TWA pilots' system seniority list may bid for such position in accordance with his pilot seniority and the normal bidding procedures as established in the TWA-ALPA Working Agreement. If no pilot bids for such third crew member position, it shall be filled by assignment of the most junior pilot on the system. When a pilot bids or is assigned to a third crew member position, in accordance with the above, he shall retain and continue to accrue seniority on the TWA pilots' system seniority list, and when so assigned (either as a result of a bid or involuntary assignment) he shall be placed on the TWA Flight Engineers' system seniority list below all Flight Engineers listed in Appendix A attached hereto and, except as provided in paragraph A below, his employ-

ment while assigned to such position shall be governed by the Working Agreement providing for the latter seniority list. The relative seniority of pilots so placed on the TWA Flight Engineers' system seniority list, as among such pilots, shall be the same as their relative position on the TWA pilots' system seniority list. A pilot who serves as a third crew member, as outlined above, if displaced from such position, shall exercise his normal displacement options as established in the TWA-ALPA Working Agreement.

- E. Placement of Pilots or Flight Engineers on a seniority list other than that of their initial employment as aircraft operating crew members, as provided in paragraphs C and D above, shall have no effect in altering or diminishing such Pilots' or Flight Engineers' rights in event of reduction in force. Each such Pilot or Flight Engineer shall have full rights to exercise his seniority and bid and job rights accruing to him from his position on the seniority list which he holds as the result of his initial employment as an aircraft operating crew member.
- F. A pilot who bids a third crew member position in accordance with paragraph D above, may be required by the Company to serve in such position for a period of nine (9) months from the date of initiation of his training. A pilot who is involuntarily assigned to such position, may be required to serve for a period of one hundred fifty (150) days following assignment to schedules in such position. A pilot, while restricted as above, may nevertheless bid on pilot positions and, if awarded the bid, it shall be held in abeyance until the end of the appropriate period specified above. At the end of such period, the pilot will fulfill such bid award, seniority permitting.
- G. A pilot who bids or is assigned to a third crew member position in accordance with paragraph D above shall be given training to meet the requirements of the Company and applicable Federal regulations, on Company time and at Company expense in accordance with the appropriate provisions of the TWA-ALPA Working Agreement. Notwithstanding paragraphs 2 and 3 or any other provisions of the Memorandum of Understanding dated May 22, 1959, the Company shall not be required to offer or conduct training for pilots to secure flight engineer certificates except where required for a pilot to fill a third crew member vacancy in accordance with

SECTION 27, PAGE 166 OF THE TWA-ALPA COLLECTIVE BARGAINING AGREEMENT DATED JANUARY 23, 1970 (EXCERPT FROM JOINT EXHIBIT 10, PRE-TRIAL ORDER)

**SECTION 27
PRIOR RIGHTS**

The parties to this Agreement hereby represent and specifically agree that nothing in this Agreement is intended in any way to diminish or to increase, to any extent, either the pre-existing job rights or qualifications, of any Flight Engineer listed in Appendix A and A-1 of the Crew Complement Agreement of September 25, 1962.

**SECTION 28
EFFECTIVE DATES AND DURATION**

Unless otherwise stated in the Agreement, the provisions of this Agreement shall become effective on December 1, 1970, except that amendments to:

Section 5, Section 6, Section 10, Section 19 shall become effective on January 1, 1970;

Section 17 (C) shall be effective as to pay rates after date of signing;

and the entire Agreement shall remain in full effect through August 31, 1971, and shall remain in effect without change for yearly periods thereafter, unless a notice of intended change is served in accordance with Section 6, Title I, of the Railway Labor Act, as amended, by either party hereto at least sixty days prior to August 31, 1971, or a subsequent anniversary date, except that each party specifically agrees not to exercise its right under Section 6 of the Act to serve a demand for a change in the rates of pay of the Boeing 727 pilots effective any time prior to January 1, 1971.

IN WITNESS WHEREOF, the parties have signed this Agreement this 23rd day of January 1970.

For TRANS WORLD AIRLINES, INC.
/s/ David J. Crombie

WITNESS:

s T. M. Cromartie
s L. A. Girard
s R. J. Kenny
s R. W. Dunn
s E. F. O'Reilly

For THE AIR LINE PILOTS ASSOCIATION, INTERNATIONAL
/s/ Charles H. Ruby

DEFENDANT BEATY'S LETTER TO TWA REQUESTING ARBITRATION (JOINT
EXHIBIT 13, PRE-TRIAL ORDER)

13855 W. 67
Shawnee, Kansas 66216
June 25, 1971

Mr. David Crombie
Vice President - Personnel
Trans World Airlines, Inc.
605 Third Avenue
New York, N.Y. 10016

JUN 28 1971
VICE PRES. IND. REL.

Dear Sir:

I was employed as a flight engineer from September, 1956, to April, 1967, and thereafter as a first officer, with flight engineer seniority and priority rights, until January, 1971, when I was terminated by the Company.

I appealed the termination to the Pilots System Board of Adjustment. The appeal is now pending. I also requested assignment to the flight engineer position, in accordance with my rights under your agreement with me, signed on 10, APRIL, 1963. That request has been denied and, I am told, my right to the flight engineer position will be denied without regard to the outcome of the appeal.

I request that the Company's denial of my right to the flight engineer position and its failure to assign me as a flight engineer be submitted to the arbitrator designated in TWA's agreement with me as soon as possible.

I have retained the firm of O'Donnell & Schwartz, Esqs., 501 Fifth Avenue, New York, N.Y. 10017, to represent me in this matter and request that all further correspondence be referred to them.

Very truly yours,

Charles W. Beaty
Charles W. Beaty

cc: James Berger, Esq., ALPA Counsel
O'Donnell & Schwartz, Esqs.

JUN 30 1971

LETTER FROM TWA REJECTING DEFENDANT'S ARBITRATION REQUESTS,
DATED JULY 2, 1971 (JOINT EXHIBIT 14, PRE-TRIAL ORDER)

TRANSC WORLD AIRLINES, INC.
605 Third Avenue
New York, New York 10016

July 2, 1971

Asher W. Schwartz, Esq.
O'Donnell & Schwartz
501 Fifth Avenue
New York, New York 10017

Dear Mr. Schwartz:

You recently advised us that you represent a number of former TWA flight crew members who resigned or were terminated by TWA over the last several years. Each of them, as we understand it, has had the following employment history:

- (1) They were, to begin with, TWA Flight Engineers, and were listed in Memorandum A or A-1 to the June 1962 Crew Complement Agreement between TWA and the Flight Engineers International Association, TWA Chapter.
- (2) They then voluntarily became TWA Pilot First Officers at various times in and after 1965.
- (3) They then failed to upgrade from First Officer to TWA Captain, and, at that point, either resigned from TWA's employ or were terminated.

Under the Crew Complement Agreement, so-called "A" and "A-1" Engineers were entitled to "prior rights" to TWA Flight Engineer positions under the conditions described in that agreement. Each such Engineer executed an individual agreement with TWA embodying similar terms, in respect of such "prior rights", and each such agreement embodied a clause for arbitration between the employee and TWA under certain circumstances.

JUL 30 1971

LETTER FROM TWA REJECTING DEFENDANT'S ARBITRATION REQUESTS,
DATED JULY 2, 1971 (JOINT EXHIBIT 14, PRE-TRIAL ORDER)

Asher H. Schwartz, Esq.

July 2, 1971

Relying upon these individual agreements, you have now requested on behalf of unidentified members of that group: (a) assignment to a TWA Flight Engineer position, and (b) that TWA now submit that request for such assignment to arbitration under the individual agreements. I have now received individual letters, to similar effect, from a number of the individuals, each of whom asked me to communicate with you. Having now consulted with TWA operations management and with counsel, I must advise you that TWA can accede neither to the requests for reinstatement as Engineers, nor to the requests that we agree to arbitrate their request.

As you have indicated to me that you intend to institute legal action on behalf of your clients in the event we do not comply with your arbitration request, I shall not attempt to list here all the reasons why we have decided not to acquiesce. I mention only four. First, we believe the men in question understood the terms on which they volunteered for training as Pilot First Officer, and understood that future failure to upgrade to Captain would mean termination in accordance with established TWA policy in respect of First Officers failing to upgrade to Captain. Second, we do not believe the 1962 and 1963 "prior rights" agreements were intended to cover the present situation. Third, this effort to secure reinstatement as Flight Engineers and/or arbitration on the basis of "prior rights" agreements is to say the least, tardy in most, if not in all instances. Fourth, any agreements giving "prior rights" to Engineer positions which survived the promotion of your clients to Pilot First Officer, (including any provision for arbitration in such agreements) terminated, by their terms, upon the employee's resignation or termination for cause. Thus, our agreement to arbitrate, even if it were otherwise applicable, has itself clearly terminated in respect of your clients, each of whom has either resigned or been terminated for cause. Your clients' proper recourse, we believe, was or is to grieve their termination and to appeal to the TWA Pilot System Board of Adjustment as not being for just cause. Several of your clients did follow that course. Several of these appealed cases have already been decided by that Board against your clients. Others are still pending before the Board.

We regret, of course, that TWA has lost the services of a number of fine men who served TWA well for many years. But TWA's well-established policy of terminating flight crew members who

LETTER FROM TWA REJECTING DEFENDANT'S ARBITRATION REQUESTS,
DATED JULY 2, 1971 (JOINT EXHIBIT 14, PRE-TRIAL ORDER)

Asher W. Schwartz, Esq.

July 2, 1971

fail upgrading is, as you know, a policy our Operations management believes to be important to airline safety and efficiency. Those considerations must come first here.

I am sending a copy of this letter to each of the former TWA flight crew members who have written me directly.

Sincerely,

D. J. Cronbie
D. J. Cronbie

DEFENDANT BEATY'S NOTICE OF INTENT TO ARBITRATE DATED JULY 22,
1971 (JOINT EXHIBIT 15, PRE-TRIAL ORDER)

Sir:

PLEASE TAKE NOTICE that pursuant to the agreement in writing between Charles W. Beaty and Trans World Airlines, Inc., ("TWA"), dated April 10, 1963, Charles W. Beaty intends to proceed to an arbitration of the dispute between the parties as to whether TWA has violated the aforesaid agreement by denying the undersigned's prior right, as a TWA Memorandum A Flight Engineer, to bid for and occupy the flight engineer position on TWA.

PLEASE TAKE FURTHER NOTICE that unless within ten days after service of this notice of intention to arbitrate you apply to stay the arbitration herein, you shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time.

Dated: New York, N.Y.

July 22, 1971

CHARLES W. BEATY

By:

Robert J. Nuyf

O'DONNELL & SCHWARTZ
(Attorneys for
Charles W. Beaty)
501 Fifth Avenue
New York, N.Y. 10017
Tel: MU2-1261

To: Trans World Airlines, Inc.
605 Third Avenue
New York, N.Y. 10016
Att: Mr. D.J. Crombie

TWA-ALPA-FEIA SYSTEM BOARD AGREEMENT DATED MARCH 23, 1972 (JOINT EXHIBIT 16, PRE-TRIAL ORDER)

Re: Grievances of : C. W. Beaty
F. Dack
L. R. Jesse
K. E. Lenz
A. C. Loomis, Jr.
A. Wenzlaff

The appeals of the above Grievants in respect of the termination of their employment by Trans World Airlines, Inc. have heretofore been processed to the four-member TWA Pilots' System Board of Adjustment. The Air Line Pilots Association, International, as the representative of said Grievants, has presented certain claims on the Grievants' behalf, which claims have now been denied by said Board.

Pursuant to an agreement among the parties, the Grievants reserved the right to present additional claims comprehended by their respective appeals at a subsequent hearing of the said four-member Board. It is now agreed that the said additional claims shall be submitted directly to the TWA Pilots' System Board of Adjustment sitting as a five-member Board with Arthur Stark as Referee.

TWA-ALPA-FEIA SYSTEM BOARD AGREEMENT DATED MARCH 23, 1972 (JOINT
EXHIBIT 16, PRE-TRIAL ORDER)

The said five-member Board shall hear and determine the said additional claims at the same time as it hears and determines the similar claims of W. R. Breen, E. A. Leonhard and C. V. Tate.

Dated: March 23, 1972

Air Line Pilots Association, International

BY James S. Berger

Trans World Airlines, Inc.

BY Hubert J. ... Attorney

For the Greivants Above-Named
O'Donnell & Schwartz, attorneys

BY Edw. ...

CONCLUSIONS, PAGE 49-50 OF DECISION OF FIVE-MEMBER SYSTEM BOARD
(STARK AS REFEREE) ON GRIEVANCES OF CERTAIN DEFENDANTS DATED
MARCH 2, 1973 (EXCERPT FROM JOINT 17, PRE-TRIAL ORDER)

required to upgrade is inappropriate.

The Grievants' discharges, therefore, were unwarranted.

c. Conclu . . .

The majority of the regular Board members agree with the first view expressed above. The decision, therefore, must be to deny all the claims.¹

The undersigned Referee, while signing the decision, neither concurs in, nor dissents from, this result. His function is to break a deadlock. Thus, 21-A(M) states in part that "in the event of a decision of deadlock in any case . . . the Board shall promptly notify the parties to the case of such deadlock decision, . . . and . . . that the services of a fifth member of the Board are desired. . . ." When a majority of the regular members agree, therefore, no referee is required. That is the situation here although, for reasons discussed previously, the four-man Board was bypassed.

I have conceived of my role as referee in this case in these terms: (1) To preside at the hearings, make procedural or evidentiary rulings as necessary, and generally to conduct the proceedings so as to insure that all parties have been afforded a full and fair hearing; (2) to analyze and evaluate the evidence and arguments for consideration by the members of

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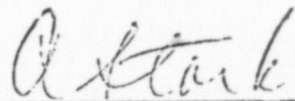
The collective bargaining Agreement requires that "a decision of a majority of the Board sitting with the fifth member shall be final and binding upon the parties. . . ." (Section 21-A(M)). In the present case, no matter how the Referee might vote, the outcome would be the same.

CONCLUSIONS, PAGE 49-50 OF DECISION OF FIVE-MEMBER SYSTEM BOARD
(STARK AS REFEREE) ON GRIEVANCES OF CERTAIN DEFENDANTS DATED
MARCH 2, 1973 (EXCERPT FROM JOINT 17, PRE-TRIAL ORDER)

the Board; (3) to prepare an opinion reflecting such evaluation; and (4) to cast a deciding vote whenever necessary.

I do not believe, however, that my role should include an expression of approval or disapproval of a decision which the regular members have reached, a decision which in essence reflects the contracting parties' agreement on the meaning and application of their own contract. It should be noted, nevertheless, that while reasonable men may disagree on what the decision in this case should be, it cannot be said that the conclusion reached is irrational or capricious. Whether one agrees with it or not, the decision here is a tenable one.

March 2, 1973.



Arthur Stark, Referee

eljp

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
TRANS WORLD AIRLINES, INC., :

Plaintiff, :

-v- :

71 CIV 3533

CHARLES W. BEATY, et al., :

Defendants.:

-----x
December 2, 1974
2:00 p.m.

BEFORE:

HON. JOHN M. CANNELLA,

District Judge.

A P P E A R A N C E S:

POLETTI, FREIDIN, PRASHKER, FELDMAN & GARTNER, ESQS.

Attorneys for plaintiff,

BY: HERBERT PRASHKER, ESQ.,

Of Counsel

O'DONNELL & SCHWARTZ, ESQS.

Attorneys for defendants,

BY: ASHER W. SCHWARTZ, ESQ.,

Of Counsel

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2 (Case called.)

3 MR. PRASHKER: Plaintiff is ready.

4 MR. SCHWARTZ: Defendant is ready.

5 THE COURT: Well, I am waiting.

6 MR. PRASHKER: Sorry, sir. I apologize for being
7 a little late--

8 THE COURT: No, I think you were early.

9 MR. PRASHKER: Thank you.

10 May it please the Court, my name is Herbert
11 Prashker. I represent the plaintiff Trans World Airlines
12 in this proceeding. You have signed this proceeding a pre-
13 trial order which is dated--

14 THE COURT: We are at the stage of the opening,
15 what are you going to prove? I am aware of the pre-trial
16 order; I know what the issues are. The stage we are at
17 is the evidence you are going to produce in the light of
18 the pre-trial order which sets up the one issue.

19 MR. PRASHKER: Right, sir. We intend to produce
20 some evidence which should not take very long in respect of
21 the issue to be tried listed at page 13 of the pre-trial
22 order to the effect that during the negotiations which led
23 to the signing of the individual agreements pursuant to
24 which arbitration was requested of this proceeding, FEIA
25 and TWA understood and intend that the determination as to

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2 whether there was cause for the discharge of a flight en-
3 gineer was to be made by the System Board of Adjustment
4 rather than by the arbitrator named in the individual agree-
5 ment or by any other method. In respect of that issue, we
6 believe that the facts which have already been stipulated
7 go very far to proving our side of the question.

8 Specifically, the fact, which has been stipulated
9 to, that at the time of the negotiations of the individual
10 agreements, the practice of the parties was to submit all
11 discharges for cause for determination exclusively to the
12 grievance procedure stipulated in the agreement between
13 TWA and FEIA which, of course, includes an appeal to the
14 System Board of Adjustment. That fact is stipulated to or
15 has been agreed to in paragraph 10 on page 5 of the pre-
16 cious order.

17 It is against that background that we will now
18 call our only witness, Mr. David Crombie.

19 D A V I D J. C R O M B I E. having been called
20 as a witness on behalf of the plaintiff, was duly
21 sworn and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. PRASHKER:

24 Q Mr. Crombie, what is your present position with
25 Trans World Airlines?

XXX

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Crombie-direct

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2 A I am vice president of industrial realtions.

3 Q How long have you occupied that position?

4 A It will be 15 years February 1, 1975.

5 Q That means that you held that position during the
6 negotiation of the 1962 crew complement agreement between
7 TWA and the Flight Engineers International Association.

8 A I did.

9 Q During the subsequent negotiation of the form of
10 the individual agreements provided for in memorandum C of
11 that crew complement agreement?

12 A I did.

13 Q As well as the period of negotiation of the November
14 1962 working agreement covering your flight engineers?

15 A I did.

16 Q Did you participate in the negotiations with repre-
17 sentatives of the FEIA as to the form of the individual
18 agreements which were referred to in memorandum C of the
19 crew complement?20 A Not directly. The form of that agreement was worked
21 out and negotiated by Jesse Freidin, an attorney, now de-
22 ceased, in our behalf, and Asher Schwartz, an attorney then
23 representing and now representing the FEIA.24 Mr. Freidin kept me advised from time to time on
25 the progress of his negotiations on the form of that agree-

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Crombie-direct

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2 ment and received my approval to conclude the agreement in
3 the form in which it was agreed to by both parties.

4 Q Early in the course of the negotiations as to the
5 form of the individual agreement, did you receive from Mr.
6 Schwartz a draft of a proposed agreement?

7 A I did.

8 Q I show you a document which appears to be a copy
9 of a letter from Mr. Schwartz to you dated July 11, 1972--

10 THE COURT: Mark it for identification.

11 (Plaintiff's Exhibit 1 marked for identification.)

12 Q I show you Plaintiff's Exhibit 1 for identification,
13 which appears to be a copy of a letter dated July 11, 1962
14 from Mr. Schwartz to yourself, attached to which are a five-
15 page draft of an agreement. Can you tell me whether you
16 received the original of that letter with the attached draft
17 from Mr. Schwartz on or about that date?

18 A I did.

19 MR. PRASHKER: I offer it in evidence.

20 MR. SCHWARTZ: Your Honor, may I ask a question
21 or two on voir dire?

22 VOIR DIRE EXAMINATION

23 BY MR. SCHWARTZ:

24 Q I see no signature on this letter of July 11,
25 1962, Plaintiff's Exhibit 1. Do you know whether the letter

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Crombie-direct

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2 you received has such a signature?

3 A I do not.

4 Q This is the only copy you have?

5 A Yes.

6 Q Do you know any of the circumstances surrounding
7 your receipt of this letter?

8 A I do not recall the circumstances surrounding my
9 receipt of that letter.

10 MR. SCHWARTZ: I object, your Honor, to the admis-
11 sion of that letter. There is no signature on it--

12 THE COURT: What about the draft? Did you send
13 the draft? It's only a transmittal letter, isn't it?

14 MR. SCHWARTZ: There is a transmittal letter and
15 there is a draft--

16 THE COURT: What is essential is the draft. I
17 couldn't care whether it came by carrier pigeon. What we
18 are interested in is the draft. Do you have any objection
19 to it?

20 MR. SCHWARTZ: To the draft?

21 THE COURT: That is what we are talking about.

22 MR. SCHWARTZ: May I ask a question or two on that?

23 BY MR. SCHWARTZ:

24 Q Do you know who made the markings on the margin
25 of the draft?

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Crombie-direct

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2 THE COURT: Are those being offered?

3 MR. PRASHKER: No, sir.

4 THE COURT: They are not being offered.

5 MR. SCHWARTZ: Then as I understand it, the letter
6 is not being offered--7 THE COURT: Actually, the letter, I don't know
8 that it adds anything. I haven't seen this, so I don't
9 know. But I assume what we are trying to get into evidence
10 is the draft.11 MR. PRASHKER: Yes, sir. I am trying to get in
12 evidence that this is a draft submitted by Mr. Schwartz.13 MR. SCHWARTZ: That I would not agree to. We
14 don't know whether it was submitted by Mr. Schwartz.15 MR. PRASHKER: The initials on the fifth page of
16 the draft are AWS. Mr. Crombie has already testified--17 THE COURT: He got his from his office files,
18 right?19 MR. PRASHKER: This copy I believe comes from our
20 office file.

21 THE COURT: Where did you get it?

22 MR. PRASHKER: We represented TWA during these
23 negotiations. Mr. Freidin was a member of our office.
24 The only copy we have found of this letter was the copy
25 in our office file. It's the best evidence available.

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Crombie-direct

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2 Mr. Crombie has testified that he received the
3 original of this letter plus the draft on or about July 11,
4 1962.

5 MR. SCHWARTZ: I don't think he testified to that.
6 He said that this is a letter that he got out of the files,
7 or as I understand it, out of the files of the company; is
8 that right?

9 THE WITNESS: No. I testified that I received
10 it and you asked me if I recalled whether or not there was
11 a signature on what I received, and I stated I did not know.

12 Q Do you know from whom you received it?

13 A I don't recall, Asher, whether I received it by
14 messenger from your office or through the United States
15 mails or conveyed through Mr. Freidin from you.

16 Q You don't know?

17 A I don't know.

18 MR. SCHWARTZ: Your Honor, Mr. Freidin is deceased.
19 I as attorney for the association at the time negotiated
20 the agreement; my lips are sealed. I cannot testify as to
21 any of the transactions that went on between myself and
22 Mr. Freidin. I will take Mr. Prashker's word for it, that
23 it was in the files of Poletti, Freidin. But how it was
24 used, how it was presented, what the circumstances were of
25 its presence in their files, we cannot determine in this

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Crombie-direct

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2 proceeding and I therefore challenge its use.

3 THE COURT: This draft is supposed to have come
4 from you, isn't it?

5 MR. SCHWARTZ: It's supposed to. It has not my
6 written initials, it just has AWS typed. There is no sig-
7 nature on it.

8 MR. PRASHKER: Perhaps we could let your Honor look
9 at the document while we are discussing it.

10 MR. SCHWARTZ: I could understand what you are
11 saying and I don't have to physically see it to know that.

12 Your Honor, there were many documents that Mr.
13 Freidin and I looked at, examined. I don't know whether
14 this was one of them or not. But at any rate, I don't think
15 that it ought to be used in this proceeding with that kind
16 of foundation.

17 MR. PRASHKER: I point out again that Mr. Crombie
18 has testified that he received the original of this letter
19 with the accompanying draft from Mr. Schwartz on or about
20 July 11, 1962.

21 MR. SCHWARTZ: I think he said he didn't know
22 whether he received it from Mr. Schwartz or from Mr. Freidin
23 or where he received it from.

24 THE COURT: Do you know who you received it from?

25 THE WITNESS: I don't recall, sir.

1 eljp

Crombie-direct

10

2 THE COURT: I will reserve on the offer at this
3 time. The Court directs the defendant to look through its
4 file and see whether or not it has a copy of this which would
5 be in their files, appears any place.

6 MR. SCHWARTZ: Your Honor, the defendant has already
7 done so, because this letter was produced at a deposition of
8 Mr. Crombie, and there is nothing in the files to show a
9 copy of it. In my files or in the organization's files.

10 THE COURT: It may be that this is the best evi-
11 dence, then, I don't know. If that is the state of affairs,
12 as you say, there is nothing in your files.

13 MR. SCHWARTZ: The best evidence of what?

14 THE COURT: The best evidence that he at sometime
15 received this and certainly it wasn't sent by anybody con-
16 nected with him; it was sent by the opposite side. It is
17 nothing that he created, nothing that he made up; it's some-
18 thing that was proposed to him and he recalls receiving it
19 at that point in time; he doesn't know from whom. But I
20 don't know that that makes much difference.

21 The two parties are dealing with one another and
22 they are dealing at arm's length. I remember some of these
23 cases. I think I had one.

24 MR. SCHWARTZ: Yes, you did, the Jackson case.

25 THE COURT: That case, as I recall, I even made

1 eljp

Crombie-direct

11

2 a finding that TWA had nothing at all to do with these fel-
3 lows, that they were dealing completely at arm's length. I
4 think that was one of the central reasons why I decided
5 the way I did.

6 MR. SCHWARTZ: I don't think so, your Honor.

7 THE COURT: I think it was--well, it has nothing
8 to do with this case. But in any event, it would seem to
9 me that--I will reserve on it at this time, but it seems
10 to me on the state of the evidence it should be admissible.
11 But I will make a judgment before the case is over.

12 MR. PRASHKER: May we have this document marked
13 as Plaintiff's Exhibit 2, please?

14 (Plaintiff's Exhibit 2 marked for identification.)

15 BY MR. PRASHKER:

16 Q Mr. Crombie, I show you Plaintiff's Exhibit 2 for
17 identification consisting of a copy of a letter which appears
18 to be from Asher, for O'Donnell & Schwartz, addressed to
19 Mr. Jesse Freidin dated August 16, 1962 together with a
20 four-page draft of an agreement with the handwritten endorse-
21 ment, final form. I ask you whether you saw the original
22 of that letter, dated August 16, 1962 and the accompanying
23 draft, on or about that date?

24 A Yes, I recall receiving this, a copy of that,
25 from Mr. Freidin.

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1 eljp

Crombie-direct

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2 MR. PRASHKER: I offer it in evidence.

3 MR. SCHWARTZ: No objection.

4 THE COURT: Received.

5 (Plaintiff's Exhibit 2 was received in evidence.)

6 Q Mr. Crombie, as TWA vice president for industrial
7 relations did you participate in the negotiation of the crew
8 complement agreement between TWA and the FEIA executed on
9 the date of June 21, 1962, including the so-called memorandum
10 C, which is annexed thereto?

11 A I did.

12 THE COURT: What is the date of that agreement?

13 MR. PRASHKER: June 21, 1962.

14 Q During the course of those negotiations was any
15 consideration given to the question of whether or not the
16 issue as to whether there was cause for the discharge of a
17 flight engineer to be covered by the individual agreement
18 referred to in memorandum C was to be made by the System
19 Board of Adjustment under the TWA-FEIA agreement or any
20 applicable working agreement, or whether that issue was to
21 be submitted to an arbitrator to be appointed under the indi-
22 vidual agreement? Was that question considered at all in
23 relation to the--

24 A No, the question was not considered. The assumption
25 on which--

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1 eljp Crombie-direct 13

2 MR. SCHWARTZ: I will object, your Honor. The
3 question has been answered.

4 THE COURT: Yes. Sustained.

5 Q As a matter of fact, Mr. Crombie, at the time of
6 the negotiations and execution of the crew complement agree-
7 ment of June 21, 1962, was there any understanding or dis-
8 cussion as to whether there would be an arbitrator appointed
9 under the individual agreements?

10 A None that I recall.

11 Q To the best of your recollection was the idea that
12 an arbitrator would be appointed to consider any question
13 arising under the individual agreement an idea which occurred
14 or arose after June 21, 1962?

15 A Yes, it was.

16 Q To the best of your recollection, who was it that
17 proposed an arbitrator be appointed to consider or deter-
18 mine questions arising under the individual agreement?

19 A My recollection is that the association so pro-
20 posed through Mr. Schwartz.

21 Q By "the association" you are referring to--

22 A FEIA, who was his client.

23 Q You have already testified as to the nature of
24 your participation in the negotiation of the form of the
25 individual agreements. The pre-trial order in this case

1 eljp

Crombie-direct

14

2 recites that agreement was reached between TWA and FEIA on
3 the form of the individual agreement during the month of
4 August, 1962. Does that accord with your recollection?

5 A It does.

6 Q During the period of the negotiation as to the form
7 of the individual agreement, was there any discussion, to
8 the best of your recollection, as to whether or not the
9 question of whether there was just cause for the discharge
10 of a flight engineer covered by the individual agreement
11 was a question to be submitted and determined by the System
12 Board of Adjustment under the applicable working agreement
13 or to the arbitrator to be designated under the individual
14 agreement?

15 A There was none between Mr. Freidin and me, and my
16 recollection is that he did not report to me any discussion
17 on that question between him and Mr. Schwartz.

18 Q During this period did you have any understanding
19 as to what form would be the appropriate form for the deter-
20 mination of the question of whether there is just cause for
21 discharge of a flight engineer covered by the individual
22 agreement?

23 MR. SCHWARTZ: Objection.

24 THE COURT: Yes, in the absence of being made known
25 to the other side, I don't know what relevancy that has, what

1 eljp

Crombie-direct

15

2 he particularly thought about it himself.

3 MR. PRASHKER: May it please the Court, we have
4 agreed that the only issue to be tried here is whether the
5 parties to the discussions, FEIA and TWA, "understood and
6 intended that the termination as to whether there was cause
7 for discharge of a flight engineer was to be made in every
8 case by the System Board under the applicable working agree-
9 ment, or by the arbitrator."

10 That is the only question that we have submitted
11 for trial.

12 THE COURT: I realize that, but what you have
13 asked him is his own unilateral feeling in the matter. That
14 to me seems to indicate what was the feeling between the
15 parties, and not what his own feeling is.

16 MR. PRASHKER: I have testimony that we will offer
17 from Mr. Dietrich, who was then the, I think master chair-
18 man of the TWA chapter of the Flight Engineers Union, which
19 will be read to you from his testimony before the system
20 board on this point.

21 We have stipulated that that testimony may be
22 used as a deposition. I am now asking Mr. Crombie to get
23 from him his understanding, and we will try to glean from
24 Mr. Dietrich's testimony before the system board what his
25 understanding might have been. And that is the only way I

1 eljp

Crombie-direct

16

2 can deal with the subject, but as Mr. Crombie has testified,
3 to the best of his knowledge, there was no discussion. So
4 the best we can offer the Court is this party's private
5 understanding in the absence of discussion. If that is not
6 admissible, then we really have no issue to try, despite our
7 pre-trial order.

8 THE COURT: I will reserve decision on this ob-
9 jection and take the evidence and then I will rule at the
10 time that I make my mind up in this matter whether or not
11 it is admissible.

12 MR. PRASHKER: Thank you. I wonder if I could
13 ask the Reporter to repeat the question.

14 (Question read.)

15 A If by understanding you mean did I have an under-
16 standing with a person with whom I was negotiating on the
17 other side, the answer is, I had no such understanding.

18 If by understanding you mean, what was my view
19 throughout this period as to the adjudication of individual
20 disputes, I never had any other view than but these dis-
21 putes would be adjudicated through the system board proceed-
22 ings in the applicable labor agreement which covered the
23 activities of the person who was involved.

24 MR. SCHWARTZ: I repeat my objection, your Honor,
25 at this point and ask that the question and answer be

1 eljp

Crombie-direct

17

2 stricken.

3 THE COURT: Decision reserved.

4 Q Do I understand, then, Mr. Crombie, that when
5 you agreed to the form of the individual agreement in Au-
6 gust of 1962, that you understood and intended that the
7 arbitrator named in the individual agreement would not
8 determine whether there was just cause for discharge of
9 an engineer covered by that agreement?

10 A That's correct.

11 Q And had you understood to the contrary and in-
12 tended to the contrary?

13 A That's correct.

14 Q That that question would be submitted to, if the
15 engineer so requested, and determined by the system Board
16 of Adjustment under the applicable working agreement?

17 A That's correct.

18 MR. SCHWARTZ: Your Honor, I think that a leading
19 question under these circumstances is objectionable and I
20 ask that that question and answer be stricken.

21 THE COURT: Sustained.

22 Q After the agreement on the form of the individual
23 agreement in August of 1962, there followed at a later date
24 negotiations over an agreement, a working agreement which
25 was subsequently executed in November of 1962, between TWA

1 eljp

Crombie-direct

18

2 and the Flight Engineers Union?

3 A That's correct.

4 Q Did you participate as vice president of industrial
5 relations in the negotiations of that agreement?

6 A I did.

7 Q During the course of the negotiation of the Novem-
8 ber 1962 working agreement, was any consideration given to
9 the question of whether a flight engineer covered by the
10 individual agreement could process a grievance or a claim
11 that he had been improperly discharged before the arbitrator
12 named in the individual agreement?

13 A I recall no such consideration nor discussion.

14 Q Do you recall any manner, any respect in which
15 that question was relevant or involved in the negotiation
16 of the November, '62 agreement?

17 A No.

18 Q To the best of your recollection did the November,
19 1962 agreement deal with the question of whether or not the
20 arbitrator under the individual agreement would have juris-
21 diction in respect of the issue as to whether a flight
22 engineer covered by the individual agreement was discharged
23 for cause?

24 A My recollection is that it did not.

25 MR. PRASHKER: I have no further questions. Thank

1 eljp

Crombie-direct/cross

19

2 you.

XXX

3 CROSS EXAMINATION

4 BY MR. SCHWARTZ:

5 Q Mr. Crombie, have any other A or A-1 engineers
6 other than the 19 in this proceeding been terminated or
7 discharged by TWA?

8 A My recollection is that there has been one. There
9 may have been others. I recall one person, named Tarbox.
10 The one I am familiar with, that is his name, in going over
11 the names of the petitioners here, does not appear. And I
12 recall that he had been a well known person to TWA's manage-
13 ment, he having won several awards as flight crewman of
14 the year. And when he failed to upgrade successfully to
15 captain, I recall a good deal of discussion, "It's too bad
16 that Tarbox has failed because he is such a great fellow,"
17 something like that.

18 Q Didn't Tarbox resign?

19 A I don't know. All I know, Mr. Schwartz, is he
20 failed and people felt very poorly about it in management
21 because he was refuted to be an excellent person and a fine
22 employee.

23 Q But you don't recall specifically that he was
24 terminated?

25 A I do not.

eljp

Crombie-cross

20

1
2 Q He obtained another position with TWA, did he not,
3 after that?

4 A I don't recall that either.

5 Q You don't remember?

6 A I don't remember.

7 Q But other than that you have no recollection of
8 any other?

9 A That is the only specific recollection I have.

10 Q Each of the flight engineers listed in appendix
11 A and A-1 received this individual agreement that we are
12 talking about; is that right?

13 A That's right.

14 Q And you signed every one of them?

15 A I did.

16 Q A number of them, like the defendants in this
17 case, did qualify for pilot positions as first officers;
18 right?

19 A Yes, they did.

20 Q When they did, were they asked to give up their
21 individual agreements?

22 MR. PRASHKER: I'm going to object at this point.

23 THE COURT: I don't see the materiality of it.

24 MR. SCHWARTZ: I will withdraw it. I have no
25 further questions.

1 eljp

Crombie-cross

21

2 MR. PRASHKER: Nothing further.

3 (Witness excused.)

4 MR. PRASHKER: Your Honor, on page 20 of the pre-
5 trial order, under miscellaneous, paragraph 11, the parties
6 agreed that the Court could treat the transcript of the
7 testimony of Harrison S. Dietrich before the TWA pilot's
8 System Board of Adjustment on March 24, 1972 and March 31,
9 1972 as a deposition under the Federal Rules of Civil Pro-
10 cedure.

11 On that basis, the plaintiff will now read from
12 portions of Mr. Dietrich's testimony.

13 THE COURT: First tell me who he is.

14 MR. PRASHKER: That appears from the testimony.
15 He was the--

16 THE COURT: That may be. But you are starting
17 with page 20. I just want to know who he is.

18 MR. PRASHKER: He was the chairman and chief nego-
19 tiator with Mr. Schwartz for the Flight Engineers Inter-
20 national Association, TWA chapter during the period that
21 these agreements were being negotiated.

22 THE COURT: All right.

23 MR. PRASHKER: Reading from the transcript, page
24 171 of the transcript:

25 "H A R R I S O N S. D I E T R I C H, called as

1 eljp

22

2 a witness on behalf of the union, having first been
3 duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SCHWARTZ:

6 Q Sam, would you tell us how long you have been
7 employed by TWA?

8 A 26 years.

9 Q Were you employed as a flight engineer during
10 the entire time?

11 A The entire time, yes, sir.

12 Q During that period of time, you held office in
13 the FEIA, did you?

14 A Yes.

15 Q What was your office?

16 A I was a local council chairman for two terms
17 and I was president of the FEIA-TWA chapter from, I
18 believe, the fall of '59 through '65. 1965.

19 Q As president of the chapter, did you participate
20 in the negotiations in 1961-62 relating to the crew
21 complement agreement?

22 A Yes.

23 Q Can you tell us what role you played in those
24 negotiations for FEIA?

25 A Well, I was present at all of the negotiating

1 eljp

2 sessions and I was present at the drafting of the final
3 documents and the negotiations leading up to those and
4 through the year 1962.

5 Q Did you continue to negotiate after the signing
6 of the crew complement agreement?

7 A Yes, sir.

8 Q For how long?

9 A I believe the last document I negotiated was
10 the contract that was signed on February 18, 1966.

11 Q I refer you to the FEIA crew complement agree-
12 ment which is Joint 6-A. At the time that this agreement
13 was negotiated and immediately prior thereto, was there
14 any discussion with management in the negotiation of
15 the agreement, concerning the right of the flight engineers
16 at that time, to bid into pilot positions?

17 A In June of 1962, no, sir. In fact, quite the
18 contrary was true, because at that time I think management
19 was quite concerned about the pilots who were on furlough
20 and the flight engineers who were on furlough as to whether
21 they would ever have any future use for them."

22 Going on to page 176, still on direct by Mr.
23 Schwartz, line 22:

24 "Q The crew complement agreement and memorandum C,
25 calls for that agreement to be made with each individual

1 eljp

24

2 directly. Did you negotiate that with the company?

3 A Now are you speaking of the individual agreement?

4 Q Yes.

5 A The individual agreement is, as I recall, was
6 the last thing that was accomplished and it was accomplished--

7 Q Excuse me, Sam, I think you didn't catch my ques-
8 tion. I will get to that.

9 At the moment I am talking about memorandum C, in
10 which it is stated that the agreement would be made with
11 each individual directly. Now, I am talking now about,
12 did you negotiate that requirement in memorandum C?

13 A Yes."

14 Going now to page 199, cross examination by Mr.
15 Prashker. Line 17:

16 "CROSS EXAMINATION

17 BY MR. PRASHKER:

18 Q Sam, when you negotiated the crew complement
19 agreement in June of 1962, you were living under a work-
20 ing agreement between the FEIA and TWA; right?

21 A Yes.

22 Q That working agreement had a procedure for
23 dealing with grievances involving termination for cause?

24 A Yes, sir.

25 Q And it established a flight engineers' System

1 eljp

2 Board of Adjustment to hear those grievances;

3 A Yes, sir.

4 Q One of the functions of that board specifically
5 set forth in the contract was to consider grievances
6 growing out of dismissals of employees who have completed
7 their probationary period?

8 A That's correct.

9 Q Now, the A and A-1's, at the time you signed
10 the crew complement agreement, were the only flight
11 engineers whom the FEIA represented?

12 A That's correct.

13 Q At the time you signed the crew complement
14 agreement in June of 1962, was it your understanding
15 that by signing that agreement, you were putting out of
16 business the flight engineer System Board of Adjustment in
17 terms of its jurisdiction to consider grievances growing
18 out of dismissals?

19 A No.

20 Q Was it your understanding when you negotiated
21 memorandum C, that memorandum C meant that grievances
22 growing out of dismissals were going to be referred to
23 anybody other than the flight engineers' System Board of
24 Adjustment? Dismissals for cause, of course.

25 A Well, to be perfectly frank with you, this was

1 eljp

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2 never given on a discussion or consideration in the terms
3 that you have now put.

4 Q It wasn't discussed at that time?

5 A That's correct.

6 Q At the time you were negotiating the individual
7 agreements that were executed pursuant to memorandum C,
8 was there any discussion about who was going to hear
9 claims that a man was improperly dismissed for excessive
10 absenteeism or conviction of a felony?

11 Did you understand that those questions and all
12 other discharges were going to be referred to the System
13 Board of Adjustment, or did you think at that time that
14 you were putting your System Board of Adjustment out of
15 business for dismissal cases?

16 A No. In all candor, we were not putting the
17 System Board out of existence.

18 Q For dismissal cases, for discharge for cause.

19 A Now, we did--if I may say why this was discussed,
20 why we went--it is provided in this individual agreement,
21 is that everybody recognized the impracticability of an
22 individual being able to finance the cost of endorsing such
23 an agreement in Court. This was out of reach of most people.

24 We felt that--plus, I guess you would say, lack
25 of basic knowledge in some respects and time it would take

1 eljp

2 to educate the Court on how this all came about.

3 So, at that time, through mutual agreement, we
4 agreed it would be the most feasible and the best to pro-
5 vide for the method of enforcement by arbitration that is
6 included in there.

7 MR. SCHWARTZ: Included in where?

8 THE WITNESS: In the individual agreement.

9 Q My question, Sam, was, did you discuss with Mr.
10 Meinen, or when you negotiated these individual agreements,
11 whether a dispute over a dismissal for excessive absenteeism,
12 conviction for a felony, or misconduct aboard an aircraft,
13 whether those grievances concerning dismissals, would be now
14 taken away from the flight engineers' System Board of
15 Adjustment for all of the employees covered by your contract
16 at that time?

17 A No, sir, we did not.

18 Q You didn't discuss it?

19 A No, sir.

20 Q Was it your understanding at that time you nego-
21 tiated the individual agreements, that your flight engineers'
22 System Board of Adjustment would continue to hear and
23 determine dismissal grievances for just cause?"

24 MR. SCHWARTZ: Your Honor, I object on the same
25 ground that I objected to the question put to Mr. Crombie.

1 eljp

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2 All that is asked for is what is his understanding, without
3 any reference to whether any other party had the same under-
4 standing or whether there was any speech concerning it.

5 THE COURT: Did you object at that time?

6 MR. SCHWARTZ: No, sir. We were in a different
7 proceeding.

8 THE COURT: I will reserve.

9 MR. SCHWARTZ: That was not a proceeding like this.

10 MR. PRASHKER: Page 203, line 5.

11 "A No, sir. It was not in this respect. It was
12 assumed, I think, by all the parties that the System Board
13 of Adjustment was provided for in the agreement, the basic
14 agreement, would hear the items and hear all matters that
15 it had heard previously.

16 Q Including dismissals for cause?"

17 "MR. SCHWARTZ: Same objection, your Honor.

18 MR. PRASHKER: "A Yes, sir."

19 That's all for us, your Honor.

20 MR. SCHWARTZ: Procedurally, your Honor, may I
21 proceed to read some of the other answers?

22 THE COURT: Do whatever you want. I would sus-
23 pect if he rests his case at this time you would move to
24 dismiss. On the other hand, if you want to put more evi-
25 dence in, go ahead.

1 eljp

2 MR. SCHWARTZ: I think that I would like to put
3 some more evidence in. I wouldn't assume that the outcome
4 of the case is going to turn upon only this testimony.

5 THE COURT: As I see it, if you exclude this
6 testimony, then you are not going to the agreement at all
7 about whether there should be arbitration or anything else.
8 Then how can you presume that they agree on arbitration,
9 if there's nothing in the contract that says anything about
10 it?

11 MR. SCHWARTZ: The contract does, your Honor.

12 THE COURT: No, I am talking about the individual
13 agreement.

14 MR. SCHWARTZ: It does, your Honor. It says they
15 shall arbitrate. The issue is not whether there was an
16 arbitration clause in the contract, there is one--

17 THE COURT: Whether it applies to discharge or
18 voluntary--

19 MR. SCHWARTZ: That may be one way of putting it.
20 What's happened is, that the plaintiff has asserted that
21 the agreement to arbitrate terminated upon the discharge
22 of these individuals, because there is language in the
23 agreement that says that the agreement shall continue until
24 resignation, retirement or discharge for cause. Plaintiff
25 says they were discharged for cause, therefore, the agree-

1 eljp

2 ment to arbitrate is terminated. Our position is somewhat
3 different. We have several positions.

4 We say that in the first place, that whether or
5 not there was a discharge for cause within the meaning of
6 that individual agreement is something for the arbitrator
7 to decide.

8 THE COURT: I understand that.

9 MR. SCHWARTZ: All right. We have another position,
10 and that is if your Honor finds after reviewing the evidence
11 that the question of discharge for cause as Mr. Prashker
12 contends is still one to be resolved by the System Board of
13 Adjustment, or rather, not by the arbitrator, that it is
14 not to be decided by the arbitrator, then we say that your
15 Honor, the Court, could make that decision.

16 But what we really contend is, and this is the
17 point, the major point that we make in this case is whether
18 there was cause for discharge or not, that the question as
19 to whether or not the discharge denied the plaintiffs, or
20 rather in this case the defendants their priority, is the
21 question that still has to go to the individual arbitrator.

22 There are many kinds of discharges. One thing
23 that I want to emphasize to your Honor, and something which
24 I know is going to be brought to your attention in the brief,
25 is that the particular course for discharge in this case,

1 eljp

2 namely their failure to complete captain training satis-
3 factorily isn't important to the issue in this case, because
4 the contention is that the discharge--that a discharge of
5 an A or A-1 flight engineer terminates his right to arbitrate.
6 That means that that would be equally applicable to the 500
7 other flight engineers who remain in the flight engineer's
8 seat and that upon their discharge for any reason at all they
9 would no longer have the right to arbitrate the question as
10 to whether they lost their priority to the flight engineer's
11 seat improperly and without cause; so that the question
12 here is a much narrower one than it was before the pilot
13 System Board.

14 The pilot System Board had to decide, was there
15 cause for discharge, from the fact that they had failed to
16 complete captain training program satisfactorily. They said
17 by a three to two decision they did. But they did not con-
18 sider, and they weren't given this authority to consider
19 by either the contract or the parties, the question as to
20 whether the discharge therefore terminated individual agree-
21 ment.

22 The individual agreement has its own remedy, namely
23 to go to Professor Feinsinger to determine whether a priority
24 has been denied to them. The collective bargaining agree-
25 ment under which these gentlemen worked provided for a

1 eljp

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2 System Board to make decisions of grievances and discharges.

3 We have a sui generis situation where we had an
4 individual agreement reached by the parties, no question
5 about it, in which they did give a certain limited function
6 to the arbitrator, namely the function to decide whether
7 there was a denial of a priority. The question that the
8 arbitrator will have to resolve is that, given the fact that
9 there was cause for discharge, perhaps that cause for dis-
10 charge is also a reason for denying them their priority;
11 that they lost their priority by reason of that discharge.
12 But it could also be that there would be a discharge which
13 the arbitrator would say was not a basis for denying them
14 a priority; that it may have accomplished exactly what the
15 parties intended be avoided, namely that ALPA, the pilots'
16 representative, and TWA together take these men out of their
17 flight engineer's seat and put pilots in their places.

18 If the fact is that the mere termination as deter-
19 mined by the company first unilaterally, secondly, as upheld
20 by the pilots System Board with pilots and TWA sitting on
21 that board, denies them the right to go to the individual
22 arbitrator, they got nothing out of this agreement because
23 they could be replaced by pilots right down the line, which
24 is the very thing that they tried to avoid.

25 So when we get into the question, your Honor, as

1 eljp

2 to whether or not they were terminated for cause, we have
3 to look not only at the normal termination of the employee
4 for cause under a System Board of Adjustment agreement, but
5 we also have to look at this parallel agreement that was
6 signed as a separate independent agreement applicable only
7 to the A or A-1 flight engineers who are a portion of the
8 class or craft and see whether that agreement doesn't pre-
9 serve their right to go back to the flight engineer position.

10 We could argue before you as we did before the
11 pilot board, that there is no reason these men shouldn't go
12 back, they are qualified flight engineers, they are quali-
13 fied pilots, and so forth. But that isn't the question.
14 We have agreed by stipulation that these individuals knew
15 or had reason to know that if they failed captain training,
16 that the company would terminate them, that that was their
17 intention, that the company would terminate them. That
18 doesn't mean to say that they didn't have the right to go
19 to the individual arbitrator and to make a claim to him that
20 their termination denied them the priority. If the arbi-
21 trator hears their claim and decides that the termination,
22 that their termination because they failed captain training
23 was a proper termination, then it would be his job to say,
24 no, you didn't lose your priority improperly; you don't
25 have one and therefore I am going to deny your claim.

1 eljp

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2 But what we say is, it's the individual arbitrator
3 who has to make a decision, and if he doesn't have that right
4 to make that decision, then the individual agreement is just
5 a scrap of paper that could be torn apart.

6 But coming back to your question, there is an
7 agreement, and you will see it in the record, a specific
8 paragraph on the right to go to arbitration over the denial
9 of a priority, and it's that remedy that we are seeking--

10 THE COURT: What I was saying in effect was, there
11 wasn't anything as far as the arbitrator determining whether
12 or not there was a proper discharge or a voluntary giving
13 up of job.

14 MR. SCHWARTZ: I must confess to you that we
15 failed in a sense, Mr. Freidin and I, to anticipate this
16 possible thing. We said that the agreement to arbitrate
17 would terminate upon discharge. We failed to say what would
18 happen if there were a discharge with respect to the agree-
19 ment to arbitrate. And we are arguing to your Honor and we
20 are going to present it as forcefully as we can in our
21 brief, that that termination does not take place, so far as
22 the agreement to arbitrate is concerned, until the arbitra-
23 tor decides the question as to whether or not they have
24 been granted their priority. And I say that not because of
25 these 19 defendants, your Honor. There are also 500 others

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2 who could be terminated and they are sitting in the flight
3 engineer's seat and some day they are going to want to
4 assert their priority and the company is going to come back
5 to the Court and say no, you were terminated, ALPA says you
6 were and so they are gone, which is the very thing they
7 tried to avoid when they reached agreement on the individual
8 agreement.

9 Mr. Crombie testified to that on his deposition
10 and I am going to read from his deposition when I get to
11 our case. What is troubling us because of the company's
12 assertion is whether or not for some reason we frustrated
13 our intent by saying that the individual agreement terminated
14 upon discharge, the agreement to arbitrate terminated upon
15 discharge and therefore we have nothing to go to the arbi-
16 trator with, it isn't arbitrable. What we are trying to do
17 is to convince the Court that upon reading the agreement,
18 reading the circumstances under which the agreement was
19 negotiated and written, the purposes of the agreement, that
20 there is a question of interpretation as to what happens
21 when a flight engineer is terminated with respect to his
22 right, to his priority, to his position. It's complicated
23 in this fact by the fact that the flight engineers in this
24 case left the flight engineer's seat and went to the pilot
25 position. They are now seeking to get back to it. But the

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2 same principle would be applicable if they never left the
3 flight engineer's seat and were sitting in the flight en-
4 gineer's seat right now and were terminated and their termi-
5 nations were upheld by the Airline Pilots Association and
6 the company.

7 MR. PRASHKER: I wonder if your Honor would give
8 me a few minutes to reply to that lengthy exposition of the
9 legal theory during my case. I am about to rest, but be-
10 fore I do, I'd like to direct your Honor's attention to the
11 fact that while there are a number of issues of law to be
12 determined in this case, we have agreed that there is only
13 one question of fact to be litigated, and that is all I
14 think we are here today to do.

15 THE COURT: I don't know how you expect the Court
16 to figure out that there wasn't an understanding that affected
17 both parties while each party did his own thinking to him-
18 self and never communicated it to the other side. That is
19 what the difficulty is with receiving the testimony in that
20 area.

21 MR. PRASHKER: If that is the case, if nobody had
22 an understanding that the individual arbitrator was going
23 to hear these cases, hear this issue--he had jurisdiction
24 to hear something, and if you read the individual agreement
25 it is completely clear from the agreement itself that his

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2 jurisdiction to hear something was not jurisdiction to hear
3 the question of whether or not there was just cause for
4 discharge.

5 On the contrary, the agreement is worded so that
6 the entire agreement, including the arbitration provision,
7 terminates if there is a discharge for cause or a resigna-
8 tion or a retirement, and the arbitrator's authority is
9 very narrowly circumscribed to a claim of a denial of a
10 prior right.

11 The reason I was so anxious to get Plaintiff's
12 Exhibit 1 into evidence is that Plaintiff's Exhibit 1 was
13 Mr. Schwartz's opening proposal as to what the arbitrator's
14 authority would be, and it was much broader than what it
15 winds up being when the agreement is signed. What we are
16 trying to do there is to emphasize how tiny the parties
17 intended the arbitrator's jurisdiction to be with respect
18 to the individual agreement.

19 THE COURT: It seems to me that we are more or less
20 stuck with the thought that Crombie himself has said here,
21 and apparently the union fellow feels the same way, Dietrich,
22 that they never agreed.

23 MR. PRASHKER: They both said--

24 THE COURT: They both said that they had an under-
25 standing which they felt was a proper understanding, but it

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2 their own individual understanding and therefore I don't
3 know how you can possibly stick the other fellow with it
4 on either side.

5 MR. PRASHKER: If we can show, as we have shown,
6 that in a context in which the unexceptional procedure for
7 considering dismissal for cause at the time these agreements
8 were negotiated was submission of those disputes to the
9 System Board of Adjustment, and we can have a stipulation
10 to that effect--

11 THE COURT: Yes, but that is not because Crombie
12 thinks about it or Dietrich thought it was, it's because
13 it was the practice at the time.

14 MR. PRASHKER: My point is that Crombie and Dietrich
15 thought the way they did precisely because it was the prac-
16 tice. And if this Court has to interpret the individual
17 agreement, which you must do, there is no avoiding that,
18 the Court has to decide whether the individual agreement
19 covers this issue, whether it provides for the arbitration--

20 THE COURT: I don't think that what they thought
21 about it is relevant.

22 MR. PRASHKER: Your Honor, you may be right.

23 THE COURT: I will have to interpret the agreement
24 from what I know about it and what the practice was and what
25 other aid there is besides what their own individual feelings

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2 were.

3 MR. PRASHKER: If your Honor is right, I must point
4 out to you again that the parties agreed, and your Honor
5 endorsed this agreement in this pre-trial order, that the
6 only of fact to be submitted to you in this action was whe-
7 ther during these negotiations FEIA and TWA understood and
8 intended that the determination--

9 THE COURT: The relevant word there is "and." What
10 we got from Crombie is what he thought as an individual and
11 from Dietrich what he thought as an individual, not what
12 they thought.

13 MR. PRASHKER: Since we have each of them together
14 it would seem to me to add up to "they." Crombie intended
15 and understood and Dietrich intended and understood; so they
16 both intended and understood. It's true they didn't say it
17 to one another, but in the light of the framework in which
18 they were living, namely that it was always the practice,
19 never anything else, to submit these questions to the System
20 Board of Adjustment, it's only normal that they would each
21 understand and intend that what always happened would con-
22 tinue to happen.

23 We could have come in here and said, well, the only
24 evidence that we have on what the parties understood and in-
25 tended is what you see in the document itself and what you

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2 see from the practice, on which we have agreed. We thought
3 we were fortunate in having in addition from the mouths of
4 the two chief negotiators and signatories.

5 THE COURT: Except you fly in the face of hearsay
6 which is not--not hearsay exactly, but I guess it's parol
7 evidence of what the contract was supposed to mean, and I
8 don't think that the thing is ambiguous. It isn't covered,
9 that's all.

10 It isn't a case where one fellow says one thing
11 and another fellow says another thing and I have to decide
12 what did they think at the time. This is a question where
13 they didn't think about it at all.

14 MR. PRASHKER: Mr. Crombie I don't think said he
15 didn't think about it. He never discussed it--

16 THE COURT: What about putting it in the agreement?
17 There was never any thought about them putting it in the
18 agreement.

19 MR. PRASHKER: I think that is correct. But what
20 we have about the agreement is the agreement. What we are
21 offering is the agreement, the practice, and we have also
22 offered the, if you will--

23 THE COURT: In the light of his objection, I don't
24 know how I could receive either hearsay, but as I say, I
25 have reserved decision on that and I will make a ruling on

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2 it when I consider the case.

3 MR. SCHWARTZ: One interruption, if I may--

4 MR. PRASHKER: May I finish. Thank you.

5 I thought I understood Mr. Schwartz to say that
6 the question before you was not simply the question of who
7 was to hear and determine the question of just cause for
8 discharge, but it was really and I think he said a final
9 point, the question of whether a finding of just cause for
10 discharge extinguished the prior right.

11 Mr. Schwartz distinguishes between those two ques-
12 tions. We will talk at some other time in our brief about
13 whether there is such a distinction.

14 Again I come back to the pre-trial order. The
15 pre-trial order says that the only issue of fact to be
16 litigated is who is to make the decision on just cause for
17 discharge. That is what we agreed to litigate. Moreover,
18 Mr. Schwartz' statement of position in the pre-trial order,
19 and I am referring now to page 17, paragraph C, "The defen-
20 dant's contend, one, that the prior tribunal to determine
21 whether the defendants had voluntarily resigned or been dis-
22 charged for cause within the meaning of the individual agree-
23 ment, and whether they are barred from arbitration by alleged
24 latches or by alleged failure to assert their claims in the
25 time and manner provided in the individual agreements, is

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2 the arbitrator named in each of those agreements.

B6 3 "And two, that if the Court finds that such ques-
4 tions, to wit, the question of who is the proper tribunal
5 to determine whether there's been just cause for discharge,
6 if the Court finds that such questions are not within the
7 scope of the arbitrator's authority, the right of the def-
8 dants to arbitrate the issue of whether their discharge or
9 resignations under the TWA-ALPA working agreement deny them
10 their prior rights under their individual agreements was not
11 terminated by such resignations or discharges under the TWA-
12 ALPA working agreement."

13 So he first contends, first, that the proper tri-
14 bunal to hear the discharges for cause is the arbitrator,
15 not the System Board. The only issue of fact, we have sub-
16 mitted, is whether the propr tribunal was understood and
17 intended to be that.

18 THE COURT: Even if I found it was the System Board
19 that had the right to do this, that still doesn't bar him
20 from making his position known. But that is not the lit-
21 gation before me. That is the trouble with it. He may have
22 rights which he may establish in some other form and under
23 other circumstances, but not before me.

24 But what he was arguing about is happening as a
25 result of this decision, as I see it.

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2 MR. PRASHKER: His talk about the other 500 en-
3 gineers is very out of place. As your Honor knows very well
4 and from cases which Mr. Schwartz has tried before you, the
5 union which represents these employees has obligations of
6 fair representation under the Railway Labor Act in respect
7 to those employees. The individual agreements provide that
8 they have these rights which terminate only on the occasion
9 of discharge for cause.

10 If TWA and the Airline Pilots Association cook up
11 some phony reason for discharge for cause in order to avoid
12 these prior rights, Mr. Schwartz has his remedies.

13 THE COURT: That gets over in the other area of
14 the other case I had.

15 MR. PRASHKER: There isn't any question presented
16 here as to good faith whether this is a proper discharge
17 for cause.

18 THE COURT: This order that I signed, and you may
19 well realize that I don't sign only one pre-trial order, and
20 I don't analyze with care what it's about, once the magistrate
21 has ruled on it and the parties agree I assume they know what
22 they are doing, both the lawyers and the judge. But the
23 fact of the matter is that--and I haven't heard the whole
24 case--is that it's a little narrow issue whether or not it
25 should be the arbitrator or the System Board. That is the

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2 only thing I have to decide, and I don't know from the
3 wording of that, the pre-trial order, whether that was what
4 I thought I was doing, because I was under the impression
5 that both were going to let the hearsay rule or the parol
6 evidence rule go by the board and let the Court hear the
7 benefit of everything that happened. But that is not the
8 case, because he's objected to it and he has a right to
9 object to it because there is such a thing as the parol
10 evidence rule, and under the circumstances it then becomes
11 for me very easy, if he is going to insist on that and there
12 is no other further evidence, I could decide this case off
13 the bench as far as I'm concerned right now.

14 MR. SCHWARTZ: Your Honor, may I be heard? First,
15 I'd like to point out to your Honor that the agreement we
16 are talking about is between the individual and TWA, not
17 between FEIA and TWA, but between the individual and TWA.
18 So whatever understandings Mr. Crombie may have had, or Mr.
19 Dietrich may have had at the time do not resolve what the
20 agreement meant to the parties who signed it, namely the
21 individuals

22 Secondly, your Honor is quite right. We stated
23 in the pre-trial order, the second point was that if the
24 Court finds the question of whether there was a proper dis-
25 charge is not within the arbitrator's authority, then it's

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2 the right of the defendants to arbitrate the issue of whe-
3 ther their discharges or resignations under the TWA-ALPA
4 working agreement denied them their prior rights under their
5 individual agreements was not terminated by such resignation
6 or discharges.

7 THE COURT: But that is ano her cause of action.

8 MR. SCHWARTZ: That's in this case. That is what
9 we say, so it's not terminated. We have made a demand to
10 arbitrate. They have come into this Court and said stop,
11 don't let them arbitrate because the agreement to arbitrate
12 terminated. And your Honor is being asked to find, we say,
13 that it didn't terminate. They say it termina d. We say
14 the right did not terminate because of the fact that the
15 individual arbitrators still had the right to determine
16 whether their discharge, even as upheld by the ALPA board,
17 ended their right to the flight engineer's seat. That was
18 given to them by their individual agreement, an agreement
19 from th TWA-ALPA working agreement.

20 THE COURT: The trouble with that is, you didn't
21 put it in the pre-trial order.

22 MR. SCHWARTZ: All we did in the pre-trial order
23 was said what can be litigated. We originally made the
24 motion to dismiss the complaint. Judge Cooper denied the
25 motion and in fact he put into his opinion, this is not a

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2 motion for summary judgment.

3 THE COURT: Then Judge Tenney got it. That was
4 another motion, he decided it.

5 MR. SCHWARTZ: That was a question of whether the
6 ALPA System Board's proceeding should be stayed. And he
7 decided it shouldn't. And the ALPA Systems Board said the
8 defendants were properly discharged. What we say is, that
9 doesn't resolve the question before this Court, because
10 this Court has to decide whether or not they are now dis-
11 charged by TWA, whether the discharge itself denied them
12 their priority to the seat.

13 That question only the individual arbitrator can
14 resolve. We will go into the question of unfair represen-
15 tation that Mr. Prashker talks about.

16 I don't want to spend a whole afternoon arguing
17 this case, unless your Honor wants us to, and I am prepared
18 to do it. The only question that we are discussing here,
19 that we came to this Court for was--

20 THE COURT: Will you take a suggestion from the
21 Court? Will you put in all your evidence and then we will
22 talk about the law and whatever else you want to talk about.
23 Besides that, I am going to get post-trial briefs. Suppose
24 you put in your witnesses.

25 At this time, do you rest?

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2 MR. PRASHKER: I rest.

3 MR. SCHWARTZ: Your Honor, I have no witnesses
4 but I intend to read from the deposition of Mr. Crombie. I
5 must read from two transcripts because I am just informed
6 that there are certain changes that have been made in Mr.
7 Crombie's deposition, which has just been made known to me
8 at this point. On page 5, line 18:

9 "Q Do you recall that the crew complement agreement
10 of June 21, 1962 included a memorandum C?

11 A I do.

12 Q Do you recall that memorandum grants prior right
13 to the flight engineers to the third crew member position?

14 A I do.

15 Q Do you recall the reason for that memorandum
16 in the crew complement agreement, and if so, what was it?"

17 MR. PRASHKER: I am going to object on the ground
18 that this material is covered by our stipulation, the reason
19 for the crew complement agreement, and the reason for memoran-
20 dum C.

21 MR. SCHWARTZ: This deposition wasn't objected to
22 and I'd like to read it to the Court.

23 MR. PRASHKER: It is not part of the issue to be
24 litigated because it is covered by the stipulation.

25 THE COURT: He can just call it to my attention if

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2 it is in 3, what is it, page 3?

3 MR. PRASHKER: Page 4, paragraph 8.

4 MR. SCHWARTZ: It covers the subject generally,
5 but Mr. Crombie said a few other things that I think ought
6 to be on the record at this point. I don't see why the
7 Court ought not consider them. He tells the Court what con-
8 fidence they placed in Dr. Feinsinger--

9 THE COURT: Being we have no jury I will hear it.

10 MR. SCHWARTZ:

11 "Q Do you recall that memorandum grants prior right
12 to the flight engineers to the third crew member position?

13 A I do.

14 Q Do you recall the reason for that memorandum in
15 the crew complement agreement, and if so, what was it?

16 A I recall, Asher, a couple of reasons put forward
17 by the union people including yourself.

18 Among those reasons were: The prospect that flight
19 engineers, these men, at some later date, might have a dif-
20 ferent representative who would not be as avid in the preser-
21 vation of their objectives as their present representative.

22 Another reason for it was the possibility of a
23 merger of our company with another company.

24 And for these reasons, I think those were the two
25 principal reasons that these men felt that they needed them.

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2 We went along, these individual agreements to give them that
3 assurance.

4 Q What was the representative that the flight engineers
5 feared might become their new representative?

6 A Well, or course, it was obvious at that time that
7 the great overriding fear was ALPA, the Airline Pilots would
8 somehow or other end up as their representative.

9 Q The reason was that the crew complement dispute
10 was a dispute between the pilots and flight engineers.

11 A I think that is a fair statement.

12 Q And the fear was that the flight engineers might
13 be displaced by the pilots and that was the reason for giving
14 the flight engineers their priority, isn't that right?

15 A I think so."

16 Page 9, line 16--I will leave that out, your Honor.

17 Page 11, starting at line 25:

18 "Q Do you recall the reason for this separate agree-
19 ment as to the resolution of disputes under the crew comple-
20 ment agreement?

21 A Let me read it and see if I can reach back for
22 it, Asher.

23 Q Go ahead.

24 (Whereupon, Mr. Crombie read the indicated pages.)

25 A Yes, I think I can recall the reason for it.

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2 Q What were they?

3 A The flight engineers had a unique confidence in
4 Nathan Feinsinger who had been with the dispute or with the
5 resolution of the dispute from the beginning. They felt he
6 had an understanding of the whole problem, particularly of
7 the crew complement issues, and as I understand this letter,
8 it is our agreement with them that, if disputes arose be-
9 tween an individual flight engineer and the company relating
10 to the crew complement issues, they would be referred to
11 Dr. Feinsinger rather than to the System Board.

12 Q Now, Dr. Feinsinger was named by TWA and the union
13 to be the neutral member referred to in this agreement?

14 A Yes."

15 MR. PRASHKER: I am going to object to reading at
16 this point because the agreement that Mr. Crombie was address-
17 ing himself to is not before the Court or hasn't been referred
18 to. It's none of the agreements we have been talking about.
19 It's a whole different agreement.

20 MR. SCHWARTZ: I am leading up to that, and I will
21 skip to the question on the next page that deals exactly
22 with the agreement that meets Mr. Prashker's objection.

23 "Q What was your understanding as to the reason for
24 providing for this individual agreement?

25 A Again, it was an assurance to the individual flight

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2 engineer that whoever became his representative, in whatever
3 form the representation would take, the prior right, his
4 prior right to serve as flight engineer would be safeguarded;
5 this priority, the exercise of which against any pilot would
6 be safeguarded.

7 Q And that safeguard would be that the, that this
8 claim would be referred to the individual arbitrator, is that
9 right?

10 A No.

11 MR. PRASHKER: I object as to the form of the ques-
12 tion.

13 Q What was his fear? How did this agreement assuage
14 him?

15 A Well, his fear was that the pilots would take over
16 the representation right, or that the company would merge
17 and the pilots through that device would take over the repre-
18 sentation and that the pilots at one point might outnumber
19 him and might enter into an agreement with the company to
20 destroy such prior right. He wanted this document to pre-
21 serve that prior bidding right.

22 Q The document you are referring to is the indi-
23 vidual agreement?

24 A Yes."

25 On page 38, line 21, by Mr. Schwartz:

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2 "BY MR. SCHWARTZ:

3 Q Was it your understanding at that time in June
4 '62, that the flight engineers, as long as they remained
5 in the flight engineer position, would be protected against
6 being terminated and having their termination determined by
7 representatives of the Airline Pilots Association, if there
8 was a switch in representation?

9 A It was my understanding in that time frame that
10 they were, indeed, concerned that their prior right would
11 be sustained and sustained particularly against the pilots,
12 and they expressed that concern again and again through
13 their representatives, and we heard them out and the docu-
14 ments dated June 21st are our agreements to provide the
15 protection at that particular time and I've assigned those
16 documents and I intended to provide the protection those
17 documents incorporated at that period of time.

18 Q One of the protections was the signing of the
19 individual agreement that was later drafted by Mr. Freidin,
20 myself and signed by you and Mr. Dietrich, is that right?

21 A Yes.

22 Q Let us go to November.

23 By November of 1962 there was an agreement that
24 certain pilot duties or so-called pilot duties we read from
25 the book a few minutes ago, would be required of the flight

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2 engineers who qualified for the third crew member seat in
3 the jet aircraft as a condition, and that this was something
4 that was required or asked for, requested or demanded by
5 the Airline Pilots Association. This was now in November
6 of '62.

7 Now, was it not still your intention after your
8 agreement to include these qualifications in the collective
9 bargaining agreement that the flight engineers were pro-
10 tected against being terminated upon a change in represen-
11 tation, for no longer being able to perform those duties;
12 was it still your intention that they be so protected?

13 A Affirmative."

14 MR. PRASHKER: I am going to enter my objection at
15 this to his reading into evidence depositions as to Mr.
16 Crombie's intentions as long as it remains undetermined by
17 the Court whether the objections that Mr. Schwartz has made
18 to my evidence as to Mr. Crombie's intention and as to Mr.
19 Dietrich's intention are sustained.

20 THE COURT: I don't think that is so. Some of these
21 areas there seem to have been agreement. In others there
22 seem to have been individual agreement of the parties, and
23 insofar as there are individual understandings of the parties
24 they are subject to the same weakness, namely that the vio-
25 late the parol evidence rule.

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2 MR. PRASHKER: I mean to press my objection only
3 as a defensive measure to equalize my position on the record.

4 THE COURT: I understand.

5 MR. PRASHKER: All he is asking Mr. Crombie about
6 at this point is his private understanding or intention.

7 THE COURT: That is true with some of these ques-
8 tions. But in other areas there is mutuality, as I see it.
9 I was listening with an ear to that very point because it
10 came to my mind too that he is continuing to talk about "my
11 understanding," but in many of the cases he ended up the
12 answer by saying "it's reflected by what we put in the docu-
13 ment."

14 MR. PRASHKER: I didn't object to that.

15 MR. SCHWARTZ: In view of the fact that your Honor
16 has reserved decision I want to bring it to the attention
17 of the Court and it will be subject to the same reservation,
18 I assume, as your Honor made.

19 THE COURT: Unless you can persuade me, the parol
20 evidence bars these private understandings between the fel-
21 lows.

22 MR. SCHWARTZ: This isn't a private understanding,
23 your Honor, and I don't think this testimony shows the agree-
24 ment. I asked him questions as to his intention and why
25 they had that intention. That gives your Honor the background

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2 which I think he must consider in determining what the writ-
3 ten language means, when you read the written language. You
4 can't read it in an empty vacuum.

5 THE COURT: I am not going to take part of the
6 understanding and not take the other part of the understand-
7 ing. If there is an understanding which is relevant and I
8 am going to consider it for one phase of the case, I am going
9 to consider it for all phases. As I see it now, his own
10 private thinking is no more binding on the other side any
11 more than is Dietrich's private thinking binding on the TWA.
12 I will analyze it when I get to it and make whatever use of
13 it I can under the law.

14 MR. SCHWARTZ: On page 42, line 11:

15 "A As Mr. Prashker has indicated, this total defini-
16 tive negotiation on these subjects extended from June until
17 November 1962, and included the crew complement agreement
18 with the flight engineers, an economic agreement with the
19 pilots, a crew complement agreement with the pilots an
20 economic agreement with the flight engineers and an indi-
21 vidual agreement between TWA and each A and A-1 flight en-
22 gineer."

23 MR. PRASHKER: I have to object to this point, be-
24 cause he hasn't included the question that he is reading.

25 MR. SCHWARTZ: The question was asked before when

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2 I was interrupted.

3 MR. PRASHKER: No, it wasn't. It's a new question.
4 Line 5 of page 41, and I make the same objection as I did
5 before to that question.

6 THE COURT: Let me hear the question.

7 MR. SCHWARTZ:

8 "Q Was it your intention that that protection be
9 afforded in accordance with the terms of those agreements
10 by reference of any disputes in that connection to Dr.
11 Feinsinger?"

12 Then there is colloquy.

13 THE COURT: I will reserve on that.

14 MR. SCHWARTZ: Then we get to the answer:

15 "A As Mr. Prashker has indicated, this total defini-
16 tive negotiation on these subjects extended from June until
17 November 1962, and included the crew complement agreement
18 with the flight engineers, an economic agreement with the
19 pilots, a crew complement agreement with the pilots, an
20 economic agreement with the flight engineers and an indi-
21 vidual agreement between TWA and each A and A-1 flight
22 engineer.

23 During this whole period Dr. Feinsinger was in-
24 volved as the mediator. It was perfectly obvious to me that
25 during that whole period he enjoyed a special credibility

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2 with the flight engineers.

3 Beyond that, the agreements we concluded with
4 the FEIA, the protection afforded to them--going over the
5 same old ground, Asher, the documents speak for themselves.
6 I signed each one of them; I signed each one in good faith,
7 and if, indeed, among them there is the individual agree-
8 ment that refers to Dr. Feinsinger as the person to whom
9 under given circumstances different types of disputes would
10 be referred, I signed that agreement and that was my intent:
11 That given disputes affecting then functioning flight en-
12 gineers under certain circumstances be referred to him.

13 That is my recollection and my intent."

14 Your Honor, if I may interrupt this, I have no ob-
15 jection to us putting, which I what I thought we intended
16 to do, all of the testimony of Mr. Dietrich and all of the
17 testimony of Mr. Crombie on the record, and that we would re-
18 fer to that testimony as we thought it was relevant in
19 arguing our case to the Court. My problem was that it seemed
20 that Mr. Prashker was picking out bits of testimony of Mr.
21 Dietrich, and I am doing the same. But I have no objection
22 and I think it would be the best part of wisdom and justice
23 for us to put all of what they had to say on the record and
24 bring whatever we think is relevant to the issue to the
25 Court, and then let the Court judge as to whether it is

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2 proper or not.

3 THE COURT: I have no objection to that, if he
4 wants to agree to that. But it seems to me that a lot of
5 what is said by these parties is subject to a complete legal
6 objection.

7 MR. PRASHKER: Exactly. One must remember, your
8 Honor, that insofar as Mr. Dietrich's testimony is concerned,
9 it was before a System Board of Adjustment that was dealing
10 with a different issue, and that most of his testimony is
11 completely irrelevant to the issue that is to be litigated
12 here.

13 As to Mr. Crombie's deposition, which was taken
14 much more recently and in connection with this case, it is
15 true that at least it doesn't have that burden to bear, it
16 was taken in connection with this case. But there is an
17 awful lot that Mr. Schwartz asked as to which naturally I
18 didn't object because under the Federal Rules my objections
19 are reserved, and I think it would be imposing on the Court's
20 time to put in material which really isn't relevant to the
21 only issue we have agreed to try, and then subject you to
22 having to try points of evidence in respect of material which
23 probably isn't relevant.

24 I suggest Mr. Schwartz finish what he is doing,
25 which is to pick out those portions he thinks are relevant,

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2 then I will put in a few pieces to fill up some gaps, and
3 that will be it.

4 MR. SCHWARTZ: On page 81--I will start at page
5 80, line 23:

6 "Q With regard to the individual agreement on June
7 21, 1962, memorandum C, provided that there would be an indi-
8 vidual agreement but, isn't it a fact that at that time the
9 parties did not feel they had sufficient time in which to
10 negotiate the terms and provisions of that individual agree-
11 ment; would you say that was--

12 A In Washington?

13 Q In Washington, '62.

14 A I think that is a fair statement.

15 Q It is a fair statement, too, that they were eager
16 to get the crew complement agreement signed?

17 A I think it is a fair statement to say, Asher, that
18 both parties were eager to get something signed to prevent
19 a work stoppage. We were working against a deadline and
20 we wanted to put sufficient pieces in place to prevent the
21 work stoppage.

22 I think that is a fair assessment and it is prob-
23 ably fair to say that somewhere at five o'clock in the
24 morning either Freidin, you or Goldberg, or the three to-
25 gether said: Look, we can take care of this individual

1 eljp

2 agreement later on.

3 I think that is a fair assessment of what took
4 place.

5 Q It was intended that that individual agreement
6 would be negotiated and made between the parties after con-
7 ferences between the attorneys for the parties, and that it
8 would include in it whatever administrative machinery they
9 agreed was appropriate?

10 A It was intended to--when?

11 Q In June '62.

12 A It was intended that there would be an individual
13 agreement, but in June of '62 I don't think I especially, or
14 I for one paid a hell of a lot of attention to what would
15 be in it, except that I agreed there would be one.

16 Whether it would offer a remedy, or the form of
17 the remedy, or the person to be the remedier, I cannot truth-
18 fully testify.

19 I don't have a clear recollection of any such in-
20 tention in those moments when we concluded that agreement."

21 On page 82:

22 "Q Do you recall whether or not Professor Feinsinger
23 participated in the negotiation of the pilot crew complement
24 agreement?

25 A My distinct recollection is no.

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2 I think I would like to leave it at that.

3 Q Do you recall if Dr. Feinsinger was selected as
4 the arbitrator named in the individual agreement after the
5 pilot crew complement agreement was executed, that is, after
6 September 25, 1962?

7 A I believe he was.

8 I have to be fair and say at all times starting
9 in June or even prior to June of '62, Nat Feinsinger was a
10 person to whom the flight engineers looked to for guidance,
11 counsel and a fair deal.

12 But our formal agreement to his selection as the
13 arbitrator was after the conclusion of the pilot agreement."

14 Page 84, line 16:

15 "Q Has there been a reopening of the basic working
16 agreement for modification?

17 Have a majority of the flight engineers listed
18 in memorandum A and A-1 voluntarily decided to reopen that
19 crew complement agreement?

20 A To my knowledge, no."

21 On page 88, line 16:

22 "Q And that is why you signed that letter?

23 A I want to distinguish--"

24 MR. PRASHKER: Objection. Could we have the whole
25 question?

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2 THE COURT: What precedes that?

3 MR. SCHWARTZ: Line 1, I guess, page 88--

4 MR. PRASHKER: No, line 13.

5 MR. SCHWARTZ: Yes, I can start there:

6 "Q Those specifications were included in the ALPA
7 agreement of September 25, 1962, 1 through 8, is that
8 correct?

9 And that is why you signed that letter?

10 A I want to distinguish that answer.

11 In signing that letter--Asher, you know it was
12 not beyond the realm of possibility that there would be some
13 other form of representation. As long as we are going down
14 this road, we might as well go all the way.

15 One of the possibilities is that that form of
16 representation might make obsolete or destroy or do away
17 with all the prior agreements that I had signed with the
18 flight engineers per se, with the one exception of the indi-
19 vidual agreement.

20 As a matter of fact, that is why the engineers
21 wanted the individual agreement.

22 I always had anticipated somewhere down the road,
23 one year or ten years, the fact that these crosses would be
24 off our back and these guys would get together.

25 But, the one thing I felt that would persist

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2 indefinitely--and I'm not an expert on these duration clauses
3 under the Railway Labor Act--the one thing I felt as a
4 negotiator persisted and represented the good faith of TWA
5 to these people was their individual agreement.

6 I don't know whether you consider that responsive
7 or not, tying this letter up with that agreement, and fencing
8 around with you and Herb, what gets tied up to what; we could
9 play this exercise, and I'm willing to fuss around as long
10 as anybody wants, but the one persistent thing in spite of
11 all the references to 2A, 2B, November, June; the one thing
12 I'm certain of, this is kind of a cutting the gordian knot,
13 but the individual agreement, despite the ups and downs of
14 the representation rights and the duration of this agreement
15 or that agreement, the individual agreement was the thing
16 the guy could hang his hat on.

17 Q I will accept that. But I would also have to in-
18 sist, and I think that you would agree with me, and that is
19 why I am persisting in questioning you about it; as long as
20 ALPA continued to require TWA to insist upon the flight
21 engineers performing the duties that were included in
22 2(b), those eight duties, that TWA was not going to reach
23 any agreement with FEIA to change those duties or to take
24 them out, to remove it.

25 Was that not your understanding at that time?"

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2 MR. PRASHKER: I am going to object to this entire
3 line on the same ground as before.

4 THE COURT: I will listen to it, but it has the
5 same frailty as the other.

6 MR. PRASHKER: I am going to object also at this
7 time, your Honor, on the ground that this particular testi-
8 mony is irrelevant to the issue. He hasn't told you which
9 letter agreement or individual agreement he is now talking
10 about. It's not the individual agreement we are concerned
11 with directly here. It's a different agreement.

12 MR. SCHWARTZ: It's a different agreement and it
13 came up in the course of discussion and it's going to be
14 something we are going to cover in our brief because what
15 we are talking about is in the record as an exhibit and,
16 therefore, we can refer to it in our brief and we will, and
17 argue about it. I asked Mr. Crombie some questions about it,
18 and I thought it appropriate to put those questions and an-
19 swers into the record.

20 MR. PRASHKER: The parties' understanding about
21 how Section 2B of a different agreement was to be applied
22 has nothing to do with the issue of fact we agreed to be
23 litigated, which is what was the parties' understanding and
24 intention in respect of who was going to try the question of
25 just cause, the arbitrator under the individual agreement or

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2 the System Board.

3 What he is talking about has nothing to do with
4 that subject. It is irrelevant.

5 MR. SCHWARTZ: As I understand our posture, your
6 Honor, the only thing we are considering at this hearing are
7 whatever facts, tryable issues of fact that have to be liti-
8 gated, but that doesn't mean to say that the rest of the evi-
9 dence in this case is to be ignored. It's going to be, I
10 am sure, considered by the Court after the Court reads--

11 THE COURT: Most of which has been stipulated.

12 MR. SCHWARTZ: Yes, that's right. And among them
13 is this November 21, '62 agreement that I referred to in my
14 questioning of Mr. Crombie.

15 THE COURT: It still may be irrelevant, I don't
16 know. I won't rule on them at this time. I will take it
17 subject to connection. Does that conclude the deposition?

18 MR. SCHWARTZ: Except for the Dietrich.

19 THE COURT: Wait a minute. About this one here.

20 MR. SCHWARTZ: No, I didn't finish reading it.

21 MR. PRASHKER: You were at page 90, line 9. I
22 think the last thing you said was--

23 MR. SCHWARTZ: "Was that not your understanding at
24 that time?"

25 A My understanding--if we want to go down this route,

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2 Asher--is the possibility of having the flight engineers
3 effectively represented by ALPA was never going to be a
4 reality until the number of newly hired flight engineers ex-
5 ceeded the A and A-1 engineers.

6 One of the possibilities that I visualized is that
7 when that took place there would be one agreement. It may
8 be the engineers or the older fellows you represented would
9 be dragged kicking and screaming under that agreement, but
10 whatever the terms of that agreement, the individual agree-
11 ment of the A and A-1s gave them a right to hang on to.
12 Whatever that said, TWA was bound to stand by."

13 That's all that I have from Mr. Crombie's deposition.

14 THE COURT: Mark that for identification.

15 MR. PRASHKER: May I at this point read some addi-
16 tional portions?

17 MR. SCHWARTZ: May I finish with a few extracts
18 from Mr. Dietrich's testimony?

19 THE COURT: What I want to do is mark both this and
20 the Dietrich for identification so it is part of the record.

21 (Defendants' Exhibit A marked for identification.)

22 MR. PRASHKER: Would the Court prefer me to read
23 my excerpts at this time or wait for Mr. Schwartz?

24 THE COURT: I guess you might as well finish that
25 first and then go on to the other one.

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2 MR. PRASHKER: Mr. Schwartz began at page 11, line
3 25. So that it is unclear what document he is talking about.
4 I'm going to add to what he read on that page, beginning with
5 line 10 as follows:

6 "Q Well, he would then have to go to the System
7 Board would he--I will withdraw that question because I
8 want to refresh your recollection by another provision of
9 the crew complement that I am sure you have forgotten.

10 And that is a separate letter of agreement dated
11 November 21, 1962, which provides for--

12 MR. PRASHKER: Page 3?

13 MR. SCHWARTZ: Pages 126 and 127 of Exhibit 2.

14 BY MR. SCHWARTZ:

15 Q (Continuing)--which provides for a resolution of
16 the disputes in connection with the contract interpretation,
17 application or performance of the memorandum of agreement
18 dated June 21, 1962."

19 Mr. Schwartz ended a reading of a section, reading
20 "affirmative," which is on page 40, line 7. I want to read
21 what immediately follows, page 40, line 8:

22 "Q Right.

23 And you stated that protection was afforded to
24 them by the individual agreement?

25 MR. PRASHKER: Objection as to form.

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2 It calls for a legal conclusion. It is argumen-
3 tative.

4 THE WITNESS: Well,--

5 MR. PRASHKER: Excuse me, David. You have to let
6 me finish the objection for the record.

7 It calls for a conclusion. You are arguing with
8 the witness and it is not a correct statement of his prior
9 testimony.

10 BY MR. SCHWARTZ:

11 Q You state it now correctly.

12 A It is, indeed, true that after an exchange of docu-
13 ments throughout the summer of 1962, at some time in Novem-
14 ber TWA concluded an individual agreement with each A and
15 A-1 flight engineer that afforded or reaffirmed his prior
16 right as against any pilot on the TWA list in the flight
17 engineer's position under the conditions set forth in the
18 agreement."

19 And then Mr. Schwartz I believe began again with a
20 question on line 5,

21 "Right, and it was your intention," and so forth.
22 This is on recross by Mr. Prashker, page 83, line 11, imme-
23 diately after the portion Mr. Schwartz read. It is imme-
24 diately following the portion of Mr. Crombie's answer read
25 by Mr. Schwartz which reads, "that our formal agreement of

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2 his selection was after the conclusion of the pilot agree-
3 ment. And I read now from page 83, line 11:

4 "Q Do you recall whether or not he participated in
5 the last months of the negotiation of the flight engineers
6 working agreement?

7 A I know he did that.

8 Q Do you recall whether he was named as the arbi-
9 trator under the individual agreements after the execution
10 of the November 21, 1962 agreement?

11 A My recollection is that that formality took place
12 after those negotiations."

13 And that's all I have, sir.

14 THE COURT: Did you mark the Dietrich?

15 MR. PRASHKER: Does your Honor have the pre-trial
16 memorandum?

17 THE COURT: Yes.

18 MR. PRASHKER: That testimony of Mr. Dietrich is
19 filed as Exhibit 53.

20 THE COURT: I want to mark it in evidence here so--
21 for identification.

22 MR. PRASHKER: Could we deem that copy marked, sir?

23 THE COURT: Yes. Even if you mark it in the pre-
24 trial order--it is not in the pre-trial order.

25 MR. PRASHKER: No, sir, it's in the pre-trial

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2 memorandum. If it is necessary, I will unbind our copy.

3 THE COURT: All right. It is deemed marked Defen-
4 dants' Exhibit B for identification.

5 What do you want to read from, Mr. Schwartz?

6 (Pause.)

7 MR. PRASHKER: Here is Mr. Dietrich's testimony.

8 (Defendants' Exhibit B marked for identification.)

9 MR. SCHWARTZ: I have nothing, your Honor, that
10 has not already been done.

11 THE COURT: All right. Does that conclude what
12 you want to put in?

13 MR. SCHWARTZ: Yes, sir.

14 THE COURT: Any rebuttal?

15 MR. PRASHKER: No, sir.

16 THE COURT: Both sides rest?

17 MR. PRASHKER: Yes, sir.

18 THE COURT: You give me your own time schedule on
19 this. I won't be able to get to this right away. Off the
20 record.

21 (Discussion off the record.)

22 MR. PRASHKER: I take it you want briefs and pro-
23 posed findings and conclusions?

24 THE COURT: That's right. I want them geared to
25 the transcript. You can take as much time as you want with

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2 with post-trial brief, which will include that, of course.

3 I will reserve decision.

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5 oOo

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
TRANS WORLD AIRLINES, INC.,

Plaintiff,

OPINION

-against-

CHARLES W. BEATY, WILLIAM R. BREEN,
JOHN P. CARR, FRANKLIN D. DACK, DAV
LEWIS DAVIES, FRANK DAVIS, CHESTER LEE
EDWARDS, OTTO F. FLEISCHMANN, ROBERT W.
GAUGHAN, E.T. GREENE, LAWRENCE RAYMOND
JESSE, KENNETH E. LENZ, EDWARD A.
LEONHARD, A.C. LOOMIS, Jr., VERNON C.
MEYER, JAMES MILTON MILLER, MARSHALL
EARL QUACKENBUSH, CHARLES V. TATE and
CHARLES E. WOOLSEY,

Defendant.

71 Civ. 3533
(JMC)

-----X
Appearances:

Poletti Freidin Prashker Feldman & Gartner,
New York City (Herbert Prashker, Kim Ebb, Lawrence
A. Katz, of counsel), for plaintiff.

O'Donnell & Schwartz, New York City (Asher W.
Schwartz, of counsel), for defendants.

CANNELLA, D.J.:

Trans World Airlines' petition for a permanent
stay of arbitration under the New York Civil Practice Law
and Rules §§ 7502, 7503 and for a declaratory judgment
is hereby granted.

JURISDICTION

Jurisdiction in this case is founded upon diversity of citizenship and the Railway Labor Act (RLA), 45 U.S.C. § 151-181.

FACTS

The Court finds and the parties have, for the most part, agreed that the factual background is as follows. On June 21, 1966, Trans World Airlines (TWA) and the Flight Engineers International Association, AFL-CIO (FEIA), the then recognized collective bargaining representative under the RLA for TWA's Flight Engineers, entered into an agreement in settlement of a dispute with respect to the crew complement on jet aircraft. That agreement (hereinafter referred to as the Crew Complement Agreement) obligated TWA (1) to offer to all TWA employees then classified as A and A1 Flight Engineers the prior right as against other flight crew members to bid for and occupy all flight engineer positions required by TWA's operations until the Engineer's retirement, voluntary resignation or discharge for cause, and (2) to enter into an individual agreement with each Flight Engineer to that effect. At the time the Crew Complement Agreement was entered into, each of the defendants herein was employed by TWA as an A Flight Engineer.

In August, 1966, TWA and FEIA agreed upon the form of the individual agreements. The pertinent sections of

the agreement are as follows:

NOW THEREFORE, in consideration of the mutual provisions hereinafter set forth and of the mutual promises set forth by and on behalf of the Company and Flight Engineer in the aforesaid Agreement of June 21, 1962, and in consideration of past services rendered, it is agreed:

1. So long as the Company includes, or is required by law or federal regulation to include as members of any of its cockpit flight crews more than two airmen, and one or more of such airmen is assigned to perform the flight engineering function ... , the Company agrees that it will offer to Flight Engineer the prior right as against flight crew members other than flight engineers to bid for and occupy any flight engineer positions required by the Company's operations....
2. This Agreement shall survive the expiration of the current and any future collective bargaining agreement between the Company and the Association ... and shall continue in full force and effect until Flight Engineer's retirement, voluntary resignation or discharge for cause....

....

5. In the event that the Company threatens to sign any agreement or to take any action which denies or will, immediately or in the future, directly result in the denial of Flight Engineer's prior right to bid for and occupy the flight engineer's position, as provided herein and in the aforesaid Agreement of June 21, 1962, or which modifies, varies from, or is inconsistent therewith, or if the Company has signed such an agreement or has taken such action, Flight Engineer shall have the right to assert his objection to the Company by notice in writing by registered mail or by telegram. The Company shall reply to said

objection within four (4) calendar days by registered mail or telegram. If Flight Engineer deems said reply to be unsatisfactory, he may, within four (4) calendar days, submit his said objection to Nathan Feinsinger or if he is unable to serve, to James C. Hill, as arbitrator. The said arbitrator shall immediately communicate with the Company and Flight Engineer for the purpose of inquiring as to the nature and merit of Flight Engineer's objection. If, following such inquiry the arbitrator believes that in order to preserve Flight Engineer's right as herein defined it is necessary to direct the Company to refrain from taking the action objected to pending a full hearing on Flight Engineer's objection, he shall have the authority to do so. The arbitrator shall in any event schedule a hearing on Flight Engineer's objection within four (4) calendar days following receipt thereof, and shall render his decision thereon not later than four (4) calendar days thereafter.

....

Between April 1963 and October 1963, all of the defendants herein, then employed as Flight Engineers, signed individual agreements with TWA containing the above provisions.

During 1966 and 1967 each of the defendants voluntarily bid for and was assigned to Pilot First Officer Training and upon satisfactory completion of that training, each was assigned to a position as a Pilot First Officer. Subsequently, between August 1968 and March 1970, each defendant entered training for upgrading to the position of TWA Captain.

At the time each defendant was trained for and assigned to a position as Pilot First Officer, and voluntarily accepted assignment to training for upgrading to Captain, he was aware of TWA's long-standing practice of discharging Pilot First Officers who failed to complete captain's training satisfactorily. In fact, TWA has never allowed a pilot to remain in its employ as a flight crew member after he has failed to successfully complete training for TWA Captain. Between June 3, 1969 and May 13, 1971, TWA determined that each defendant had failed to complete captain's training satisfactorily and as was its policy, gave the defendants the opportunity either to resign or be discharged.

After many of the defendants submitted grievances to the Systems Board of Adjustments pursuant to a grievance procedure established under the Railway Labor Act, seventeen of the defendants informed TWA by letter that it had violated their ^{individual} agreements by refusing to assign them to Flight Engineer positions subsequent to their failure to complete captain's training successfully, thereby denying their prior right to bid for and occupy that position. The letters also requested arbitration of those claims pursuant to the terms of the individual agreements. TWA rejected the requests for

arbitration and thereafter defendants served notice upon TWA of their intention to demand arbitration of their claims. TWA now brings this action to stay such arbitration. It argues that no agreement to arbitrate presently exists between the parties in that the individual agreements terminated upon the defendants' discharges. Defendants, on the other hand, maintain that the entire matter should be submitted to arbitration, including the threshold issue of the existence of an agreement to arbitrate. The trial of this cause was had before the Court, sitting without a jury, on December 2, 1974.

DISCUSSION

The initial question presented by the instant case is whether the Court or the arbitrator properly determines whether the parties must arbitrate the grievance presented. Whether or not an employer is bound to arbitrate is normally a threshold matter to be determined by the court on the basis of the contract entered into by the parties. Operating Engineers Local 150 v. Flair Builders, Inc., 406 U.S. 487, 491-92 (1972); John Wiley & Sons v. Livingston, 376 U.S. 543, 546-47 (1964); Atkinson v. Sinclair Refining Co., 370 U.S. 238, 241 (1962); International Union, United Automobile, Aerospace and Agricultural Implement Workers of

America, U.A.W. v. International Telephone and Telegraph Corporation, Thermotech Division, 508 F.2d 1309 (8th Cir. 1975); Proctor & Gamble Independent Union v. Proctor & Gamble Mfg. Co., 312 F.2d 181, 184 (2d Cir. 1962), cert. denied, 374 U.S. 830 (1963).^{1/} Arbitration is a matter of contract and a party cannot be required to submit any dispute to arbitration that he has not agreed to have arbitrated. Gateway Coal Co. v. United Mine Workers of America, 414 U.S. 368, 374 (1974); United Steelworkers of America v. Warrior & Gulf Nav. Co., 363 U.S. 574, 582 (1960). Consequently, when a claim is made that an agreement containing an arbitration clause has terminated, that issue is to be resolved judicially^{as a matter of contract law}. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W. v. International Telephone and Telegraph Corp., Thermotech Division, 508 F.2d 1309, 1313 (8th Cir. 1975); Oil, Chemical & Atomic Workers Local 7-210 v. American Maize Products Co., 492 F.2d 409 (7th Cir.), cert. denied, 417 U.S. 969 (1974); Proctor & Gamble Independent Union v. Proctor & Gamble Mfg. Co., 312 F.2d 181, 184 (2d Cir. 1962), cert. denied, 374 U.S. 830 (1963).

An exception to the general rule, which defendants claim is applicable here, exists where the parties have

agreed to arbitrate the issue of contract termination. See, e.g., Electrical Workers Local No. 4 v. Radio Thirteen-Eighty, Inc., 469 F.2d 610 (8th Cir. 1972); Winston-Salem Printing Pressmen's Union v. Piedmont Publishing Co., 393 F.2d 221 (4th Cir. 1968). However, there is no provision for arbitration of the issue of contract termination in the agreements before us. The arbitration clause in the individual agreements is limited to disputes arising from a threat to or denial of defendants' "prior right" to Flight Engineer positions, and is not broad enough to manifest an intention that termination be decided by the arbitrator. "Where the assertion ... is that the parties excluded from court determination not merely the decision of the merits of the grievance but also the question of its arbitrability, vesting power to make both decisions in the arbitrator, the claimant must bear the burden of a clear demonstration of that purpose." United Steelworkers of America v. Warrior & Gulf Nav. Co., 363 U.S. 574, 583 n. 7 (1960). Defendants have not done so in this case.

Defendants present another argument in favor of submitting the question of arbitrability to the arbitrator. They contend that since a determination of the arbitrability of the grievance depends in this case upon facts

identical to those relevant to a decision on the merits of the grievance, the entire matter should be submitted to arbitration. We cannot agree. The court is not relieved of its duty to decide whether an arbitrable dispute exists merely because there is an alleged identity of issues involved in the merits of the grievance and the question of arbitrability. Engineers Association v. Sperry Gyroscope Co., 251 F.2d 133, 137 (2d Cir. 1957), cert. denied, 356 U.S. 932 (1958).

Having determined that it is the court's province to decide whether the parties have in fact agreed to arbitrate, the Court turns its inquiry to the question of whether the parties herein entered into a contract providing for the arbitration of the claimed grievances. It should be noted that we are not here concerned with the scope of an arbitration clause, thereby requiring the application of a presumption in favor of arbitrability, United Steelworkers of America, supra, but rather, we are concerned with the existence of an agreement to arbitrate.

The individual agreements provided for arbitration of any claim by a Flight Engineer with respect to his prior right to bid for and occupy a Flight Engineer position to which TWA had not adequately responded. By their terms,

the agreements, including the arbitration clauses, were to expire upon each Flight Engineer's retirement, voluntary resignation or discharge for cause. The Flight Engineers argue that since a discharge^{2/} is the ultimate denial of their prior right to bid for and occupy a Flight Engineer position, it should be subject to the arbitration agreement. They contend that if the agreements terminate on discharge and such an action is not arbitrable, the protection bargained for in the Crew Complement Agreement and the individual agreements, is illusory. Therefore, the crucial question for the Court becomes whether the parties agreed to arbitrate a claim that a discharge for cause was a denial of a Flight Engineer's prior right with respect to a flight engineer assignment. The Court finds that they did not.

The individual agreements carefully specify the conditions under which they would survive. Discharge for cause was not such a condition. In fact, such a discharge was a situation which would cause the termination of the agreement. If the defendants herein were discharged for cause following their unsuccessful attempt to be upgraded to the position of TWA Captain, there was no agreement to arbitrate in existence when they subsequently requested

arbitration. Consequently, TWA could not be required to submit to arbitration of the alleged grievances.

The defendants take the position that "if the Individual Agreement had not stated that it terminated upon his discharge, each of the defendants would undoubtedly have been before the individual arbitrator to decide whether his prior right was violated under the Individual Agreement by his discharge and replacement by a pilot." Memorandum on behalf of Defendants, pp. 14-15. But that is precisely the point. The agreements between TWA and the Flight Engineers did so state. The Court therefore concludes that the parties did not agree to arbitrate a claim that a Flight Engineer's discharge for cause was a denial of his "prior right" to a Flight Engineer position.

This reasoning will not result in the loss of the Flight Engineers' bargained for protection. The individual agreements and the commitments to arbitrate contained therein do not terminate upon any discharge, but only upon a discharge for cause. The parties agreed that the Flight Engineers would maintain their prior right to bid for and occupy Flight Engineer positions, and their right to arbitrate any claims arising therefrom, only until they were discharged for cause.

Having reached this conclusion, the only issue

remaining for judicial resolution is whether under the present circumstances there has been a discharge for cause within the meaning of the individual agreements. During the negotiations preceding the 1962 Crew Complement Agreement and the individual agreements, the parties did not discuss the meaning of the phrase "discharge for cause." However, a discharge for cause is ordinarily defined as a discharge for some reason which is not arbitrary or capricious. International Auto Sales & Service, Inc. v. General Truck Drivers, Chauffeurs, Warehousemen & Helpers, Local Union No. 270, 311 F.Supp. 313 (E.D. La. 1970); one which is neither unjustified nor discriminatory, see International Trades Union v. Woolsocket Dyeing Co., 122 F.Supp. 872 (D. R.I. 1954). Viewed from this perspective, it is exceedingly clear that the defendants herein were discharged for cause. They make no allegations that their discharges were simply a subterfuge to avoid the individual agreements. In fact, it is the defendants who seek to avoid the consequences of their voluntary acts. They entered training for upgrading to Captain, well aware of their inevitable discharge should they be unsuccessful. Having been unsuccessful, they seek to compel arbitration of their discharges. It

was TWA's policy to discharge all such unsatisfactory trainees, and this policy was not here applied in a manner which discriminated against defendant Flight Engineers. Defendant s voluntarily assumed the risk of discharge and may not now avoid the results. The Court concludes that the defendants were discharged for cause, an event not covered by the arbitration agreement entered into by the parties to this litigation.

CONCLUSION

For the reasons stated above, the Court finds and concludes that plaintiff, Trans World Airlines, is entitled to an order enjoining arbitration of defendants grievances. The foregoing constitute the findings of fact and conclusions of law of the Court pursuant to Fed.R.Civ. P. 52(a).

SO ORDERED.

JOHN M. CANNELLA
JOHN M. CANNELLA
United States District Judge

Dated: New York, N.Y.
October 16, 1975.

FOOTNOTES

1/ Although the individual agreements all contain the following provision

8. This agreement shall be deemed to have been executed and delivered in the state of New York, and shall be construed and enforced according to the laws of the State of New York, and all provisions thereof shall be administered according to the laws of such state.

the national labor policy requires that the issues herein be governed by federal law. Cf. Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 451-454 (1957). In any event, under the laws of New York the instant arbitration agreement would be treated with "like reasoning." Long Island Lumber Co. v. Martin, 15 N.Y.2d, 380, 383, 207 N.E.2d 190, 259 N.Y.S.2d 142 (1965); see also G.E. Howard & Co., v. Daley, 27 N.Y.2d 285, 265 N.E.2d 747, 317 N.Y.S.2d 326 (1970).

2/ Although defendant Carr was not discharged but was "allowed" to resign on April 30, 1970, all defendants are herein treated as if they had been discharged. The analysis and result is not changed thereby. It may even be argued that the defendants voluntarily resigned, thereby terminating the arbitration agreement, since each entered training for TWA Captain knowing full well that he would be discharged or allowed to resign should he fail to complete Captain's Training satisfactorily. Again, the analysis and result would remain the same.

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ORDER AND JUDGMENT

United States District Court
Southern District of New York

TRANS WORLD AIRLINES, INC.,

Plaintiff,

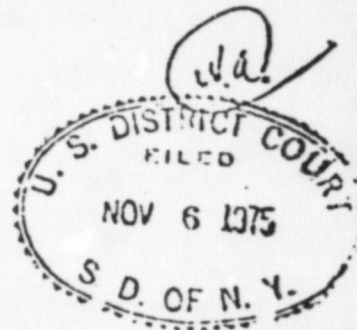
- against -

CHARLES W. BEATY, WILLIAM R. BREEN,
JOHN P. CARR, FRANKLIN D. DACK, DAVID
LEWIS DAVIES, FRANK DAVIS, CHESTER LEE
EDWARDS, OTTO F. FLEISCHMANN, ROBERT W.
GAUGHAN, E.T. GREENE, LAWRENCE RAYMOND
JESSE, KENNETH E. LENZ, EDWARD A.
LEONHARD, A.C. LOOMIS, Jr., VERNON C.
MEYER, JAMES MILTON MILLER, MARSHALL
EARL QUACKENBUSH, CHARLES V. TATE and
CHARLES E. WOOLSEY,

Defendants.

71 Civ. 3533
(JMC)

ORDER AND JUDGMENT



Plaintiff, TRANS WORLD AIRLINES, having petitioned this court for a declaratory judgment and order permanently enjoining arbitration of certain claims sought to be arbitrated by the defendants; and

This action having come on for trial before the court, on December 2, 1974, the Honorable John M. Cannella, District Judge, presiding; and

Counsel for the parties having been heard and the court having read and considered the Stipulation by the parties as to Facts Not in Dispute, the Pre-Trial Order entered herein, and all other papers and memoranda of law; and

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ORDER AND JUDGMENT

The court having rendered its opinion and decision, dated October 16, 1975, and pursuant to the Findings of Fact and Conclusions of Law contained therein;

IT IS HEREBY ORDERED AND ADJUDGED, that plaintiff is not contractually obligated to arbitrate the claims sought to be arbitrated by the defendants, and that defendants are permanently enjoined from seeking to arbitrate those claims.

New York, N.Y.
Nov. 5
Dated: ~~October 16~~, 1975

John M. Connolly

U. S. D. J. *MA*

JUDGMENT ENTERED - 11/6/75

Kaymond F. Bourgeois

CLERK

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

71 Civ. 3533
(JMC)

SAME TITLE

-----X

Notice is hereby given that CHARLES W. BEATY, WILLIAM R. BREEN, JOHN P. CARR, FRANKLIN D. DACK, DAVID LEWIS DAVIES, FRANK DAVIS, CHESTER LEE EDWARDS, OTTO F. FLEISCHMANN, ROBERT W. GAUGHAN, E. T. GREENE, LAWRENCE RAYMOND JESSE, KENNETH E. LENZ, EDWARD A. LEONHARD, A.C. LOOMIS, Jr., VERNON C. MEYER, JAMES MILTON MILLER, MARSHALL EARL QUACKENBUSH, CHARLES V. TATE and CHARLES E. WOOLSEY, defendants above named, hereby appeal to the United States Court of Appeals for the Second Circuit from the final Order and Judgment entered in this action on the 6th day of November, 1975.

Dated: New York, N.Y.

O'DONNELL & SCHWARTZ

November 19, 1975

By /s/ Michael Klein
Attorneys for Defendants-Appellants
501 Fifth Avenue
New York, N.Y. 10017
(12) 682-1261

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

VAN JOHNSON, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 125 WEST 106th ST
NEW YORK, N.Y.

That on the 19th day of JANUARY, 1976,
deponent personally served the within APPENDIX

upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose.

By leaving 1 true copies of same with a duly
authorized person at their designated office.

~~By depositing true copies of same enclosed
in a postpaid properly addressed wrapper, in the post office
or official depository under the exclusive care and custody
of the United States post office department within the State
of New York.~~

Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

POLETTI, FREIDIN, PRASHKER, FELDMAN + GARTNER
ATTORNEYS FOR PLAINTIFF APPELLEE
777 THIRD AVE.
NEW YORK, N.Y. 10017

Sworn to before me this

19th day of January, 1976

Van Johnson

Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County 77
Commission Expires March 30, 1977

